S. Hrg. 101-721

HISTORIC PRESERVATION ADMINISTRATION ACT OF 1989 AND THE NATIONAL HISTORIC PRESERVATION POLICY ACT OF 1989

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
PUBLIC LANDS, NATIONAL PARKS AND FORESTS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 1578

TO PROVIDE FOR THE CREATION OF AN INDEPENDENT HISTORIC PRESERVATION AGENCY AND A NATIONAL CENTER FOR PRESERVATION TECHNOLOGY, AND FOR OTHER PURPOSES

S. 1579

TO AMEND THE NATIONAL HISTORIC PRESERVATION ACT, THE HISTORIC SITES ACT, THE ARCHAEOLOGICAL RESOURCES PROTECTION ACT, AND THE ABANDONED SHIPWRECK ACT, AND CERTAIN RELATED ACTS TO STRENGTHEN THE PRESERVATION OF OUR HISTORIC HERITAGE AND RESOURCES, AND FOR OTHER PURPOSES

WASHINGTON, DC, FEBRUARY 22, 1990
SAVANNAH, GA, MAY 19, 1990

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HISTORIC PRESERVATION ADMINISTRATION ACT OF 1989 AND THE NATIONAL HISTORIC PRESERVATION POLICY ACT OF 1989

THURSDAY, FEBRUARY 22, 1990

U.S. Senate,
Subcommittee on Public Lands,
National Parks and Forests,
Committee on Energy and Natural Resources,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:57 p.m., in room SD–366, Dirksen Senate Office Building, Hon. Dale Bumpers, presiding.

OPENING STATEMENT OF HON. DALE BUMPERS, U.S. SENATOR FROM ARKANSAS

Senator **Bumpers**. The Subcommittee will come to order.

The purpose of this hearing this afternoon is to receive testimony on two bills pending before the Subcommittee, S. 1578 and 1579. The purpose of S. 1578 is to establish a historic preservation agency as an independent agency of the United States Government. The agency will be administered by an administrator who is appointed by the President and confirmed by the Senate.

The purpose of S. 1579 is to make numerous changes in the laws under which Federal agencies as well as State and local governments identify, protect and manage historic properties in the United States. The National Historic Preservation Act, the Historic Sites Act, the Archaeological Resource Protection Act, the Abandoned Shipwreck Act, and certain other acts would be amended to give greater protection to and provide broader authority for the preservation of historic and cultural resources, and provide the Advisory Council on Historic Preservation increased authority for management of historic resources.

Each of these bills is complex and far-reaching and raises important questions regarding how our nation's historic resources should be managed and who should be their custodian. While I have consistently supported efforts to preserve and protect America's historical and cultural resources, I have reserved taking a position on these specific measures until I have had the opportunity to study them more thoroughly and consider the testimony to be presented here today.

I would like to take a moment to commend Senator Fowler, the author of these bills and a former member of this Committee for his hard work and commitment to preserving this nation's historic treasures. Beginning with his service in the House of Representatives, he has been an active and consistent advocate for historic preservation. Those who know and care about historic resources are indeed fortunate to have Senator Fowler as an ally.

I particularly look forward to the testimony today in hopes of gaining a more complete understanding of the issues involved in these two measures. I would like to welcome all of the witnesses who will give testimony today. Unfortunately, due to a very heavy, busy Senate schedule today, I will have to ask all witnesses to limit their testimony to five minutes.

At this time I place copies of S. 1578 and S. 1579 in the hearing record.

[A statement from Senator Wallop and the texts of S. 1578 and S. 1579 follow:]

Malcolm Wallop

Opening Statement by Senator Malcolm Wallop
Subcommittee on Public Lands, National Parks and Forests
Hearing on S. 1578 and S. 1579
February 22, 1990

Mr. Chairman, thank you for scheduling this hearing to enable us to consider the merits of legislation to establish an independent Historic Preservation Agency and to amend our Nation's historic preservation laws.

Both S. 1578 and S. 1579 are of great interest and concern to me because they deal with our Nation's heritage and our efforts to protect and preserve that heritage. But I am distressed by the approach that has been taken in these bills to correct perceived deficiencies in our preservation programs. Creating new bureaucracies and legislating massive new program responsibilities in an era of fiscal restraint is simply not the way to go. It is no secret that there are many things this Nation should be doing and would like to be doing -- in historic preservation and many other areas as well. But we must be realistic and face the fact that the Federal Government is already spending beyond its means, and the creation of new programs will only compound that problem.

S. 1578 would create a new, independent, Historic Preservation

Agency to perform the historic preservation functions now being performed by the Park Service and the Advisory Council on Historic Preservation. Given the funds we are able to commit to these functions, it seems to me that the Park Service and the Advisory Council are performing them adequately. I have yet to hear a convincing reason as to why our Nation would be better off without the Park Service and the Advisory Council doing the things they now do.

S. 1578 would also create a Preservation Advisory Committee, an Archaeology Advisory Board and a National Center for Preservation Technology. While there may be some value to creating these institutions, do they really warrant higher priority than other costly and unmet needs on the Federal agenda?

S. 1579 would make drastic changes to our Nation's historic preservation laws, especially the National Historic Preservation Act and the Archaeological Resources Protection Act. These changes would require agencies to undertake new and costly procedures with regard to their historic properties and with regard to all their activities that might effect historic properties. They even go so far as to authorize court injunctions against private property owners whose only crime is to happen to own a historic property of special concern to preservationists. Other provisions of the bill would incorporate into statute policies and procedures that are already being implemented, or could be implemented, through the administrative processes of the Park Service or the Advisory Council. Are these things really necessary?

I have a particular concern with the provisions of Section 111 which appears to permit the Advisory Council to obtain an injunction against a homeowner if the Council decides that the home is a "property of critical importance" based on a threat of action which "results in the destruction or diminution of any of the qualities that qualify the property for designation". This sounds like federal intrusion into state and local police powers. It is one thing to deny federal assistance to individuals who wish to engage in activities with which we disagree, it is quite another thing to enjoin a homeowner from painting a Victorian House a non-Victorian color or replacing an historically accurate window with a thermal window. What constitutes a "property of critical importance" apparently can be a expansive as the Council wants and could include entire historic districts. The objectives of preservation of historic integrity may be laudable, but local zoning is one of those functions the Constitution reserved to the states and I don't think we need to do any more violence to that concept.

Mr. Chairman, in truth I cannot see any merit to S. 1578. There may be some features in S. 1579 that we could give some consideration to, but they are lost among other provisions that are unnecessary and unaffordable.

Thank you, Mr. Chairman. I have several questions for the witnesses, and I will submit them for the record.

II

101st CONGRESS
1st Session

S. 1578

To provide for the creation of an independent Historic Preservation Agency and a National Center for Preservation Technology, and for other purposes.

IN THE SENATE OF THE UNITED STATES

August 4 (legislative day, January 3), 1989

Mr. Fowler introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To provide for the creation of an independent Historic Preservation Agency and a National Center for Preservation Technology, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Historic Preservation Administration Act of 1989".

SEC. 2. FINDINGS.

The Congress finds and declares that—

(1) historic properties, including prehistoric and historic sites, buildings, structures, landscapes and objects, prehistoric and historic archeological resources,

prehistoric and historic roads and trails, and places that have figured in the traditions and lifeways of our communities, of Native American and other ethnic groups, and of the Nation as a whole, are vital links to our past and contribute in major ways to the identity of our Nation and its communities;

(2) historic preservation is a vital part of the Nation's well-being and economy;

(3) historic preservation is accomplished through a partnership of the private and public sectors at the national, State, tribal and local levels;

(4) in order to further the interests of the Nation's historic properties and the private-public preservation partnership, the Federal partner in historic preservation must be an independent agency within the Federal Government whose sole mission is the fostering of the Nation's historic preservation program; and

(5) the lack of adequate technology transfer for historic preservation demonstrates a clear need for a new national institution to coordinate research, disseminate information, and provide training about preservation technologies.

SEC. 3. POLICY.

It shall be the policy of the Federal Government in carrying out this Act to encourage and foster the preservation of historic properties in the United States among Federal agencies, State, tribal and local governments, and the private sector.

SEC. 4. DEFINITIONS.

For the purposes of this Act—

(1) the term "Administrator" means the Administrator of the Preservation Agency;

(2) the term "Advisory Committee" means the Preservation Advisory Committee established by section 6;

(3) the term "agency" means an agency as that term is defined in section 551(1) of title 5, United States Code;

(4) the term "Archeology Advisory Board" means the Archeology Advisory Board established by section 7;

(5) the term "Center" means the National Center for Preservation Technology established by section 8; and

(6) the term "Preservation Agency" means the Historic Preservation Agency established by this Act.

SEC. 5. HISTORIC PRESERVATION AGENCY.

(a) ESTABLISHMENT.—(1) There is established as an independent agency of the United States Government a Historic Preservation Agency which shall be headed by an Administrator, who shall be appointed by the President by and with the advice and consent of the Senate, from among persons qualified by training, experience and demonstrated ability, to administer, protect and preserve the historic resources of the United States.

(2) The Administrator shall be paid at the rate of basic pay payable for level IV of the Executive Schedule under section 5316 of title 5, United States Code.

(3) The Preservation Agency shall carry out the purpose of this Act to preserve the Nation's historic resources.

(b) TRANSFER OF FUNCTIONS.—(1) All functions and authorities of the Secretary of the Interior and of the Advisory Council on Historic Preservation contained in the National Historic Preservation Act (16 U.S.C. 470) are transferred to the Preservation Agency, the Advisory Committee, and the Archeology Advisory Board, as appropriate.

(2) Authorities transferred by paragraph (1) include—

(A) the expansion and maintenance of the National Register;

(B) administration of grants and cooperative agreements with States, local governments, Indian tribes, the National Trust for Historic Preservation, and other preservation organizations and individuals;

(C) coordination of Federal preservation activities;

(D) development of standards for historic preservation professionals;

(E) issuance of regulations and standards for historic preservation activities;

(F) review of Federal tax incentives to encourage preservation;

(G) coordination of participation by the United States in the International Convention on Cultural and Natural Heritage;

(H) other international preservation activities; and

(I) the oversight of historic resources protection.

(c) PROPERTY.—(1) The Preservation Agency shall not own or manage land. Real property acquired by the Preservation Agency shall be transferred by the Preservation Agency to an appropriate public or private owner who will ensure the preservation of any historic property transferred.

(2) Proceeds from such transfers shall be deposited in the Historic Preservation Fund established by section 108 of the National Historic Preservation Act (16 U.S.C. 470h).

(d) DIRECT ACCESS TO INFORMATION.—The Preservation Agency is authorized to secure directly from any department, bureau, agency, board, commission, office, independent establishment or instrumentality of the executive branch of the Federal Government information, suggestions, estimates, and statistics for the purpose of this title, and each such department or instrumentality is authorized to furnish such information, suggestions, estimates, and statistics to the extent permitted by law.

(e) SUBMISSIONS TO CONGRESS.—(1) No executive officer or agency of the United States shall have authority to require the Preservation Agency to submit its legislative recommendations, testimony, or comments on legislation to any officer or agency of the United States for approval, comment, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(2) When the Preservation Agency voluntarily seeks to obtain comment on or review of its legislative recommendations, testimony, or comments on legislation by any officer or agency of the United States, the Preservation Agency shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

(f) EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.—(1) The Preservation Agency is exempt from the Federal Advisory Committee Act (5 U.S.C. App.).

(2) The Administrative Procedure Act (5 U.S.C. 551 et seq.) shall govern the operations of the Preservation Agency.

(g) REGULATIONS TO CONGRESS.—(1) At least 30 days prior to publishing in the Federal Register any proposed regulation authorized by this Act, the Preservation Agency shall transmit a copy of the regulation to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(2) The Preservation Agency shall transmit to the committees named in paragraph (1) a copy of any final regulation prior to its publication in the Federal Register.

(h) RELATED AGENCY OF INTERIOR FOR ADMINISTRATION.—(1) The Preservation Agency shall submit its budget annually as a related agency of the Department of the Interior.

(2) When the Preservation Agency submits a budget estimate or request to the President or the Office of Management and Budget, it shall simultaneously transmit copies of the estimate or request to the House and Senate Appropriations Committees and the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources.

(3)(A) Subject to subparagraph (B), financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall, at the request of the Preservation Agency, be provided the Preservation Agency by the Department of the Interior, for which payment shall be made from funds of the Preservation Agency in such amounts as may be agreed upon by the Administrator and the Secretary of the Interior.

(B)(1) The regulations issued by the Secretary of the Interior pursuant to section 5514(b) of title 5, United States Code, for the collection of indebtedness of personnel resulting from erroneous payments, shall apply to the collection of erroneous payments made to or on behalf of a Preservation Agency employee.

(2) The regulations issued by the Secretary of the Interior pursuant to sections 1513(d) and 1514 of title 31, United States Code, for the administrative control of funds, shall apply to appropriations of the Preservation Agency.

(i) TRANSFER OF PERSONNEL AND PROPERTY.—(1) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, programmed, or available or to be made available by the Department of the Interior in connection with the functions assigned to the Preservation Agency by this Act as the Director of the Office of Management and Budget shall determine, shall be transferred from the Department of the Interior to the Preservation Agency not later than 60 days after the date of enactment of this Act.

(2) Personnel to be transferred to the Preservation Agency pursuant to paragraph (1) shall be identified by negotiation between the Secretary and the Administrator, or their

designees, taking into account the continuing responsibilities of the Department of the Interior with respect to the management of historic resources within the National Park System.

(j) ANNUAL REPORT.—The Preservation Agency shall submit an annual report to the Congress on the status of the national historic preservation program.

SEC. 6. PRESERVATION ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Preservation Advisory Committee is established to advise the Preservation Agency on national preservation policy and to assist the Preservation Agency in coordinating Federal preservation activities.

(b) MEMBERSHIP.—The Advisory Committee shall be comprised of—

(1) the heads of 6 of the following departments and agencies—

  (A) the Department of Transportation;

  (B) the Department of Housing and Urban Development;

  (C) the Department of Agriculture;

  (D) the Department of Defense;

  (E) the Department of the Interior;

  (F) the National Park Service;

  (G) the General Services Administration;

(H) the Environmental Protection Agency; and

(I) the Agency for International Development;

(2) the President of the National Conference of State Historic Preservation Officers;

(3) the Chairman of the Board of the National Trust for Historic Preservation;

(4) 4 persons expert in historic preservation, one each from the fields of—

(A) architecture or architectural history;

(B) American history;

(C) archeology; and

(D) anthropology,

drawn from lists of such experts compiled by the Preservation Agency in consultation with national professional organizations representing each such field of expertise;

(5) 3 members representing the general public with a demonstrated interest or involvement in historic preservation;

(6) one chairman of a tribal council or a chief executive officer of an Indian tribe;

(7) one Governor; and

(8) one mayor.

The President shall appoint the members except for those members identified by paragraphs (2) and (3).

(c) DESIGNEES.—(1) Subject to paragraph (2), each member of the Advisory Committee designated under paragraphs (a) (1), (2), (3), (6), (7), and (8) may name another person to serve in the designee's place.

(2) A person named to serve on the Advisory Committee in place of a member designated under paragraph (a)(1) shall be a person who holds a position of agency-wide responsibility.

(d) TERMS.—Members designated under paragraphs (a) (4), (5), and (6) shall serve for terms of 5 years, except that the initial appointments shall be staggered so that 2 members shall serve a 2-year term, 2 members shall serve a 3-year term, 2 members shall serve a 4-year term, and 2 members shall serve a 5-year term.

SEC. 7. ARCHEOLOGY ADVISORY BOARD.

(a) ESTABLISHMENT.—The Archeology Advisory Board is established to—

(1) advise the Preservation Agency on Federal archeology policies; and

(2) prescribe standards for professional archeologists and for archeological studies made pursuant to this Act, including the establishment of relevant arche-

ological research questions that may be addressed in federally conducted archeological projects.

(b) MEMBERSHIP.—The Archeology Advisory Board shall be composed of the following persons, appointed by the Administrator to serve 4-year terms:

(1) 2 professional archeologists specializing in prehistoric archeology and 2 professional archeologists specializing in historic archeology, drawn from lists of such professionals compiled by the Preservation Agency in consultation with national professional organizations representing each such field of expertise;

(2) 2 representatives of Native American interests, drawn from lists compiled by the Preservation Agency in consultation with national Native American organizations;

(3) 1 representative of avocational groups and public organizations interested in archeology, drawn from lists compiled by the Preservation Agency in consultation with such groups and organizations; and

(4) 1 representative of the general public.

SEC. 8. NATIONAL CENTER FOR PRESERVATION TECHNOLOGY.

(a) ESTABLISHMENT.—There is established a National Center for Preservation Technology in the Historic Preservation Agency for the purposes of the development and transfer of preservation and conservation technologies for the identification, evaluation, conservation, and interpretation of prehistoric and historic resources (including archeological sites, historic buildings and structures, cultural and designed landscapes, maritime sites, objects, and documents) through research, professional training, technical assistance, and programs for public awareness.

(b) EXECUTIVE DIRECTOR.—The Center shall be headed by an Executive Director, appointed by the Administrator of the Historic Preservation Agency with the concurrence of the Center Board of Trustees established by subsection (e), who has demonstrated abilities in science, technology, and management.

(c) OFFICERS AND EMPLOYEES.—The Executive Director of the Center may appoint and fix the compensation of such officers and employees as are necessary to perform the functions of the Center.

(d) ASSISTANCE FROM THE HISTORIC PRESERVATION AGENCY.—The Administrator of the Historic Preservation Agency shall provide the Center such personnel, equipment and facilities as may be needed for the Center to carry out its activities.

(e) BOARD OF TRUSTEES.—A Board of Trustees of the Center is established to—

(1) provide leadership, direction and professional oversight to the Center;

(2) establish priorities and allocate funds among the activities of the Center; and

(3) submit an annual report to the President and Congress.

(f) MEMBERS OF BOARD.—The Board of Trustees of the Center shall be comprised of—

(1) 1 representative appointed by the head of each of—

(A) the Preservation Agency;

(B) the National Park Service;

(C) the Smithsonian Institution;

(D) the Department of Agriculture;

(E) the Department of Commerce;

(F) the Department of Defense;

(G) the Department of Energy;

(H) the Department of the Interior;

(I) the Department of State;

(J) the Department of Transportation;

(K) the General Services Administration;

(L) the National Archives;

(M) the National Science Foundation;

(N) the Library of Congress;

(O) the Office of Technology Assessment;

(P) the National Trust for Historic Preservation;

(Q) the National Conference of State Historic Preservation Officers;

(R) the National Academy of Sciences; and

(S) the Consortia of National Laboratories; and

(2) 10 persons appointed by the President whose professional qualifications include the disciplines included in the scope of the work of the Center.

(g) TERMS.—The members of the Board of Trustees shall serve one 5-year term each, except that the initial appointments shall be staggered so that 6 shall serve a one-year term, 6 shall serve a 2-year term, 6 shall serve a 3–year term, 6 shall serve a 4-year term and 5 shall serve a 5-year term.

(h) REGIONAL PRESERVATION TECHNOLOGY CENTERS.—(1) The Center may establish regional analytical or technical research laboratories and service facilities to further the purposes of the Center.

(2) The Center shall select Regional Preservation Technology Centers from among applicants with a demonstrated institutional commitment to continuing preservation. Eligible applicants include Federal and non-Federal laboratories, museums, universities, non-profit or for-profit corporations, Co-

operative Park Study Units, Federal agencies, State Historic Preservation Officers and Tribal Preservation Officers.

(i) GRANTS AND DONATIONS.—The Center may accept—

(1) grants and donations from private individuals, groups, organizations and foundations; and

(2) matching grants from the Historic Preservation Fund.

(j) CONTRACTS AND COOPERATIVE AGREEMENTS.—The Center is authorized to enter into contracts and cooperative agreements with Federal, State, tribal and local governments, nonprofit organizations and educational institutions to carry out the Center's responsibilities under this Act.

SEC. 9. TRANSFER OF FUNCTIONS OF CULTURAL PROPERTY ADVISORY COMMITTEE.

All functions and authorities of the Cultural Property Advisory Committee created under the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 et seq.) shall be transferred from the United States Information Agency to the Preservation Agency.

○

II

101st CONGRESS
1st Session

S. 1579

To amend the National Historic Preservation Act, the Historic Sites Act, the Archaeological Resources Protection Act, and the Abandoned Shipwreck Act, and certain related Acts to strengthen the preservation of our historic heritage and resources, and for other purposes.

IN THE SENATE OF THE UNITED STATES

August 4 (legislative day, January 3), 1989

Mr. Fowler introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To amend the National Historic Preservation Act, the Historic Sites Act, the Archaeological Resources Protection Act, and the Abandoned Shipwreck Act, and certain related Acts to strengthen the preservation of our historic heritage and resources, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Historic Preservation Policy Act of 1989".

SEC. 2. FINDINGS.

Section 1(b) of the National Historic Preservation Act (16 U.S.C. 470(b)) as amended to read as follows:

"(b) The Congress finds and declares that—

"(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

"(2) historic properties, including prehistoric and historic sites, buildings, structures, landscapes, and objects, prehistoric and historic archaeological resources, prehistoric and historic roads and trails, and places that have figured in the traditions and lifeways of our communities, of Native American and other ethnic groups, and of the Nation as a whole, are vital links to our past and contribute in major ways to the identity of our nation and its communities;

"(3) a national historic preservation program is achieved by extending Federal Government concern for properties of significance to localities, Indian tribes, States, and the Nation in private and public ownership;

"(4) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

"(5) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

"(6) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic and energy benefits will be maintained and enriched for future generations of Americans;

"(7) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and private historic preservation programs and activities are inadequate to assure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

"(8) the increased knowledge of all of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and

"(9) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and although both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, to compensate State and local governments and Indian tribes for carrying out the Federal preservation program, and to assist the National Trust for Historic Preservation in the United States to expand and accelerate its historic preservation programs and activities.".

SEC. 3. POLICY.

Section 2 of the National Historic Preservation Act (16 U.S.C. 470-1) is amended to read as follows:

"SEC. 2. It is the policy of the United States to cooperate with other nations, the States, Indian tribes, local governments, private organizations, and individuals, to—

"(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

"(2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations;

"(3) administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;

"(4) contribute to the preservation of non-federally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;

"(5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and

"(6) compensate State and local governments and Indian tribes for carrying out Federal preservation responsibilities pursuant to this Act and assist the National Trust for Historic Preservation in the United States to expand and accelerate its historic preservation programs and activities.".

TITLE I—FEDERAL HISTORIC PRESERVATION PROGRAMS

SEC. 101. FEDERAL GOVERNMENT-WIDE PRESERVATION RESPONSIBILITIES.

Section 110(a) of the National Historic Preservation Act (16 U.S.C. 470h–2(a)) is amended to read as follows:

"(a)(1) Each federal agency, in carrying out the functions assigned to it, shall exercise responsibility for preserving the Nation's heritage.

"(2) A federal agency that—

"(A) has direct or indirect jurisdiction over land; or

"(B) provides program approval, grants, licenses, permits, rights-of-way, guarantees, or other forms of assistance involving land use activities or undertakings; or

"(C) cooperates with State, tribal, local, or regional governmental entities in planning and land use activities or undertakings within the United States,

shall—

"(i) in consultation with the Advisory Council, establish and implement clear internal preservation policies and procedures, including procedures for management and administration of historic properties and preservation responsibilities, enforcement of preservation requirements, performance standards for personnel with preservation-related responsibilities, procedures for periodic review by the Advisory Council, and procedures for the designation of qualified officials to serve as the agency's preservation officers;

"(ii) act affirmatively to identify and evaluate the significance of properties under its jurisdiction or subject to direct or indirect effect by undertakings the agency plans, assists, or licenses, that appear to qualify for listing on the National Register or for designation as National Historic Landmarks; and

"(iii) establish, in consultation with the Advisory Council, a management program for all historic properties the agency owns or controls.

"(3) The management program established by an agency pursuant to clause (iii) of paragraph (2) shall, consistent with the agency's mission—

"(A) provide for the systematic identification of properties that appear to qualify for listing on the National Register or for designation as National Historical Landmarks;

"(B) provide for the protection, stabilization, rehabilitation, or restoration of the properties;

"(C) ensure that the properties are utilized in ways that protect their significant characteristics;

"(D) ensure that properties that may be eligible for listing on the National Register are not inadvertently damaged, disposed of or allowed to deteriorate;

"(E) establish and implement a preservation maintenance plan for the agency's properties;

"(F) provide for cooperation in the use of properties, and other preservation purposes, with other Federal, State, tribal and local agencies and the private sector, including the transfer of properties at less than market value for preservation or educational purposes;

"(G) ensure coordination with Federal, State, tribal, and local historic preservation plans established under this Act; and

"(H) ensure compliance with section 106 and standards developed pursuant to this Act.".

SEC. 102. FEDERAL AGENCY PRESERVATION COMPLIANCE REQUIREMENTS.

Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) is amended to read as follows:

"SEC. 106. (a) During the earliest feasible planning phase of any Federal undertaking that might affect historic properties, a Federal agency having direct or indirect jurisdiction shall, in accordance with regulations promulgated by the Advisory Council—

"(1) consult or require consultation with the appropriate State, tribal, or local historic preservation officer to consider alternatives and establish methods to avoid or minimize harm to those properties, and where feasible to make productive use of the properties in ways that promote their preservation;

"(2) provide or require provision for an opportunity for the Advisory Council and other interested parties, including applicants for Federal permits, property owners, and the public, to be notified and to participate in the consultation process;

"(3) document or require documentation that—

"(A) those historic properties subject to possible direct or indirect effect by the undertaking have been surveyed, identified, and evaluated, or that procedures have been established to ensure that such a survey, identification, and evaluation will be made; and

"(B)(i) the undertaking will not directly or indirectly adversely affect historic properties;

"(ii) an agreement has been reached by the agency with the State, tribal, or local historic preservation officer and the Advisory Council on actions to be taken to avoid or minimize harm to historic properties that will be adversely affected by the undertaking, or on acceptance of such effects in the public interest; or

"(iii) the receipt, consideration, and response to final comments by the Advisory Council where no agreement is reached, including a demonstration that there was no prudent and feasible way to follow the Advisory Council's final recommendation; and

"(4) provide that, if during the course of the undertaking unanticipated adverse effects on a historic property develop, the agency will immediately—

"(A) undertake remedial measures in consultation with the Advisory Council and the appropriate State, tribal, or local historic preservation officer; or

"(B) request that the Advisory Council undertake or cause remedial measures to be undertaken, with funds and other assistance transferred to the Advisory Council to carry out such measures.

"(b)(1) Except as provided in paragraph (2), a Federal agency shall not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, at any time prior to the granting of the application—

"(A) engaged in activity that adversely affected a historic property to which the grant would relate; or

"(B) being in a position to prevent it, allowed such activity to occur.

"(2) a Federal agency may grant assistance to an applicant responsible for adversely affecting a historic property if the agency, in consultation with the Advisory Council, finds that—

"(A) the adverse effect was not the result of a deliberate effort by the applicant to avoid review of such effect pursuant to subsection (a);

"(B) the applicant has taken or will take actions to ensure that such an effect will not be permitted in the future without appropriate review;

"(C) the nature of the effect is of insufficient magnitude to justify withholding assistance; or

"(D) other circumstances exist that the agency and the Advisory Council believe justify extending the requested Federal assistance.".

SEC. 103. UNAVOIDABLE DESTRUCTION.

Section 110(b) of the National Historic Preservation Act (16 U.S.C. 470h–2(b)) is amended to read as follows:

"(b)(1) If a historic property is threatened with unavoidable destruction or disruption by a Federal undertaking after compliance with section 106, a Federal agency involved in the undertaking shall, in consultation with the Advisory Council and pursuant to regulations promulgated by the Advisory Council—

(A) take immediate action to make or have made appropriate records of the property and to deposit such records, in accordance with section 101(a), in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future public use and reference; and

(B) in the case of a threatened archaeological resource, conduct, or have conducted, appropriate archaeological research, surveys, and recovery work.

"(2) Archaeological research conducted pursuant to subsection (1)(B)—

"(A) shall be performed by archaeologists certified in accordance with the procedures developed pursuant to section 17 of the Archaeological Resources Protection Act of 1979;

"(B) may address one or more regional archaeological research questions as established in section 15 of the Archaeological Resources Protection Act of 1979; and

"(C) when feasible, include participation by avocational archaeologists and the public.

"(3) Archaeological surveys and recovery work conducted pursuant to subsection (b)(1) and section 106(a)(3)(A)—

"(A) shall not require a permit from Federal or Indian land managers under subsection (a) of section 4 of the Archaeological Resources Protection Act of 1979 (17U.S.C. 470cc(a)), but

"(B) shall meet the requirements of paragraph (5) of that subsection.".

SEC. 104. COSTS OF PRESERVATION.

(a) AMENDMENT OF EXISTING LAW.—Section 110(g) of the National Historic Preservation Act (16 U.S.C. 470h–2(g)) is amended to read as follows:

"(g) A Federal agency is authorized to expend funds appropriated for its authorized programs to carry out this Act and to charge applicants the reasonable costs of technical and financial assistance and permits.".

(b) CONFORMING REPEALER.—Section 302 of the National Historic Preservation Act (16 U.S.C. 4780w–1) is repealed.

SEC. 105. AGREEMENTS FOR THE PERFORMANCE OF AGENCY FUNCTIONS.

Section 110 of the National Historic Preservation Act (16 U.S.C 470h–2) is amended by adding at the end thereof the following new subsection:

"(k) A Federal agency may, with the approval of the Advisory Council, enter into an agreement with the Advisory Council, a State Historic Preservation Officer or a Tribal Historic Preservation Officer to perform functions of the Federal agency within a State or tribal territory, and may make funds available to the Advisory Council or to such a State Historic Preservation Officer or Tribal Historic Preservation Officer for that purpose.".

SEC. 106. CONFIDENTIALITY OF INFORMATION.

Section 304 of the National Historic Preservation Act (16 U.S.C. 470w-3) is amended to read as follows:

"SEC. 304. (a) A Federal agency shall, after consulting with the Advisory Council and in accordance with regulations promulgated by the Advisory Council, withhold from disclosure to the public information about the location or character of a historic resource if the agency determines that disclosure may create significant risk of harm to such resources or may impede the use of a traditional religious site by practitioners.

"(b) When a Federal agency has determined that information should be withheld from the public pursuant to subsection (a), the Advisory Council shall determine who may have access to such information for the purpose of carrying out this Act.".

SEC. 107. LEASING HISTORIC PROPERTY.

Section 111 of the National Historic Preservation Act (16 U.S.C. 470h-3) is amended to read as follows:

"SEC. 111. (a) Federal agencies shall establish and implement appropriate adaptive use alternatives for historic properties that are not needed for current or projected agency purposes.

"(b) A Federal agency may lease or exchange a historic property under its jurisdiction if the agency determines, in consultation with the Advisory Council and pursuant to regulations promulgated by the Advisory Council, that the transfer will adequately ensure the preservation of the property.

"(c) The proceeds of a transfer of property pursuant to subsection (b) shall be used by the Federal agency to defray administrative, repair, maintenance, and other preservation costs associated with—

"(1) the property in question; or

"(2) any other historic property that is—

"(A) under the agency's jurisdiction; and

"(B) listed on the National Register.

"(d) A Federal agency may enter into a contract for the management of a historic property under its jurisdiction if the contract ensures compliance with the preservation requirements of this Act.".

SEC. 108. INTERNATIONAL HISTORIC PRESERVATION RESPONSIBILITIES.

Section 402 of the National Historic Preservation Act Amendments of 1980 (16 U.S.C. 470a–2) is amended to read as follows:

"SEC. 402. All Federal agencies having direct or indirect jurisdiction over undertakings conducted outside the United States shall establish procedures, in consultation with and with the approval of the Advisory Council, the Department of Defense, and the Department of State, to ensure that—

"(1) during the planning of each such undertaking, the appropriate preservation authorities in the host country are consulted;

"(2) properties significant to the history or prehistory of the host country or included on or eligible for inclusion on the host country's equivalent of the National Register, which might be affected by such an undertaking, are identified and evaluated;

"(3) the effects of such an undertaking on such properties are taken into account; and

"(4) reasonable and effective steps are taken to avoid or mitigate adverse effects on such property.".

SEC. 109. EXPANSION AND MAINTENANCE OF THE NATIONAL REGISTER.

(a) REVISION OF MANDATE.—Section 101(a)(2) of the National Historic Preservation Act (16 U.S.C. 470a(a)(2)) is amended to read as follows:

"(2) The Secretary shall—

"(A) expand and maintain the National Register composed of districts, sites, buildings, structures, objects, and landscapes of international, national, regional, State, tribal, and local significance in history, architecture, archaeology, engineering, and culture;

"(B) to the maximum extent feasible, identify properties eligible for listing on the National Register and list and preserve such properties;

"(C) maintain criteria for properties to be listed on or removed from the National Register;

"(D) enter properties on and remove them from the National Register;

"(E) in consultation with the Federal Interagency Panel for World Heritage, nominate properties for inclusion in the World Heritage List in accordance with the terms of the Convention Concerning the Protection of the World Cultural and Natural Heritage, done at Paris November 16, 1972 (27 U.S.C. 37);

"(F) consider appeals of all nominations, or failures to nominate, or removals, of properties for the National Register and the World Heritage List;

"(G) notify the owner of a property and any appropriate local or tribal government when the property is being considered for inclusion on the National Register or for nomination to the World Heritage List;

"(H) provide for cooperation with, and the participation of, State Historic Preservation Officers, Tribal Historic Preservation Officers, certified local governments, Federal agency historic preservation officers, other appropriate governmental and private organizations, and the public, in the National Register program;

"(I) authorize qualified State Historic Preservation Officers and Tribal Historic Preservation Officers to nominate properties for inclusion on the National Register, and provide that such nominations will be deemed approved 45 days after their receipt, unless disapproved by the Secretary or appealed by an individual or organization; and

"(J) at least once every 3 years, in consultation with the Advisory Council, make a review of threats to properties included in or eligible for inclusion on the National Register, to determine what kinds of properties may be in special danger and by what causes, and to develop and submit recommendations to the President and Congress regarding remedial actions.".

(b) OWNER NOTIFICATION.—Section 101(a)(6) of the National Historic Preservation Act (16 U.S.C. 470a(a)(6)) is amended to read as follows:

"(6)(A) Before a property may be listed on the National Register, the owner or owners of such property (or a majority of owners in the case of a historic district) shall be notified by the Secretary or his designee and given not less than 60 days to object to the listing.

"(B) With the notification given pursuant to subparagraph (A), the Secretary shall provide information to the owner about—

"(i) the historic or archaeological significance of the property;

"(ii) the need for the preservation of property;

"(iii) the means available to protect the property; and

"(iv) the tax benefits and grant assistance available for the listing of the property, of its donation, or of the donation of a preservation easement on the property.

"(C) If the owner or owners of privately owned property (or a majority of owners in the case of a historic district) object, the proposed listing shall not be made.

"(D) If an objection to listing of a property is made pursuant to subparagraph (C), the Secretary shall review the nomination of the property to determine its eligibility for listing and shall inform the property owner and appropriate preservation officials of the determination, but the property shall not be listed unless the objection is withdrawn.".

SEC. 110. NATIONAL HISTORIC LANDMARKS.

The Act entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes", approved August 21, 1935 (16 U.S.C. 461 et seq., commonly known as the "Historic Sites Act"), is amended by adding at the end thereof the following new section:

"SEC. 8. (a) The Secretary shall—

"(1) expand and maintain the list of National Historic Landmarks;

"(2) to the maximum extent feasible, maintain and preserve National Historic Landmarks;

"(3) establish boundaries for all National Historic Landmarks, taking into account each Landmark's relevant viewsheds;

"(4) in consultation with the Advisory Council and other interested parties, maintain criteria for properties to be designated or removed from designation as National Historic Landmarks, so as to recognize and provide for representation of historic properties that—

"(A) exhibit exceptional commemorative, cultural, aesthetic, environmental, or research value; and

"(B) can be used to fulfill the essential purposes of public interpretation and inspiration regarding the nation's history, prehistory and culture;

"(5) designate and remove from designation properties as National Historic Landmarks;

"(6) consider appeals of all designations or failures to designate, and designation removals of National Historic Landmarks;

"(7) notify the owner of a property and any appropriate local or tribal government when the property is being considered for designation as a National Historic Landmark;

"(8) provide for cooperation with and the participation of State Historic Preservation Officers, Tribal Historic Reservation Officers, Certified Local Governments, other appropriate governmental and private organizations, and the public in the National Historic Landmark program;

"(9) authorize qualified State Historic Preservation Officers and Tribal Historic Preservation Officers to nominate properties for designation as National Historic Landmarks; and

"(10) prepare and transmit to Congress an annual report on the condition of National Historic Landmarks, including a listing of threatened National Historic Landmarks and any actions taken or proposed to counter the threats.

"(b)(1) When a property is nominated for designation as a National Historic Landmark, the Secretary shall notify the owner of the property (or a majority of owners in the case of a historic district) of the nomination, and of the owner's right to object to the designation.

"(2) With the notification given pursuant to paragraph (1) the Secretary shall provide information to the owner about—

"(A) the historic or archaeological significance of the property;

"(B) the need for the preservation of the property;

"(C) the means available to protect the property; and

"(D) the tax benefits and grant assistance available for the listing of the property, of its donation, or of the donation of a preservation easement on the property.

"(3) If the owner or owners of a privately owned property (or a majority of owners in the case of a historic district) object to its designation as a National Historic Landmark—

"(A) the designation shall not be made, but

"(B) the Secretary shall review the nomination to determine the property's eligibility for the proposed designation and shall inform the owner and appropriate preservation officials of the determination, but such determination shall be advisory only.".

SEC. 111. HISTORIC AND ARCHAEOLOGICAL RESOURCES OF CRITICAL IMPORTANCE.

Section 110(f) of the National Historic Preservation Act (16 U.S.C. 470h–2(f)) is amended to read as follows:

"(f)(1) In order to increase the protection of historic properties of critical importance to the Nation, States, Indian tribes, and localities, the Advisory Council shall develop—

"(A) criteria to identify historic properties of critical importance;

"(B) criteria to identify critical historic properties facing significant threats; and

"(C) develop protection standards for critical historic properties and their surroundings.

"(2) In developing the criteria and standards described in paragraph (1), the Advisory Council shall provide for coordination with State Historic Preservation Officers, Tribal Historic Preservation Officers, local governments, and other interested persons and organizations, and shall allow those parties to bring historic properties of critical importance and threats to such properties to the attention of the Advisory Council for identification and action under paragraph (3).

"(3) On learning that a person intends to take action that may threaten a critical historic property, the Advisory Council shall take appropriate action to avoid or mitigate the occurrence of such a threat, including—

"(A) seeking a voluntary solution under paragraph (4);

"(B) advising Federal agencies of the suspension of Federal assistance under paragraph (5); and

"(C) obtaining a court injunction under paragraph (6).

"(4) The Advisory Council is authorized to invite discussion among—

"(A) persons who it believes intend to take action that may threaten a critical historic property;

"(B) appropriate Government agencies; and

"(C) when the Advisory Council deems it to be appropriate, the public,

with a view toward ascertaining whether the intended action will threaten a critical historic property and whether such a threat can be avoided or mitigated to the satisfaction of the Advisory Council.

"(5)(A) The Advisory Council is authorized to transmit a suspension notice, requesting that a suspension of Federal assistance be put into effect pursuant to subparagraph (B), to any Federal agency before which there may be pending an application for any form of Federal assistance submitted by a person who the Advisory Council believes intends to take action that may threaten a critical historic property.

"(B) A Federal agency that receives a suspension notice from the Advisory Council pursuant to subparagraph (A) shall not take final action to grant an application for Federal assistance submitted by a person named in the notice until the agency receives notice from the Advisory Council rescinding the suspension notice.

"(C) The Advisory Council shall rescind a suspension notice issued under subparagraph (A) when it is satisfied that the threat to a property has been avoided or satisfactorily mitigated by voluntary action of the persons concerned or by other means.

"(6)(A) The Advisory Council is authorized to bring a civil action for temporary and permanent relief to enjoin action that is being taken or that is about to be taken that may threaten a critical historic property.

"(B) The civil action authorized by subparagraph (A) may be brought in a United States District Court for a district in which—

"(i) the property in question is located;

"(ii) a person who is taking the potentially threatening action, or is about to take such action, resides,

or in any other Federal or State court that has general subject-matter jurisdiction and jurisdiction over a person whose action is sought to be enjoined.

"(7) For the purposes of this section, the term 'threat' means any direct or indirect action that results in the destruction or diminution of any of the qualities that qualify a property for designation as a critical historic property established pursuant to subsection (a), and the term 'threaten' has the meaning correlative with the foregoing.".

SEC. 112. DEFINITIONS IN THE NATIONAL HISTORIC PRESERVATION ACT.

Section 301 of the National Historic Preservation Act (16 U.S.C. 470w) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) 'Agency' means agency as such term is defined in section 551 of title 5, United States Code.";

(2) by amending paragraph (2) to read as follows:

"(2) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.";

(3) by amending paragraph (4) to read as follows:

"(4) 'Indian tribe' or 'tribe' means any Indian tribe, band, nation, or other organized group or community, including any Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1701 et seq.) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.";

(5) by amending paragraph (5) to read as follows:

"(5) The term 'historic property' or 'historic resource' means a prehistoric or historic district, landscape, site, building, structure, or object listed on or eligible for listing on the National Register, including artifacts, records, and material remains related to such a property or resource."

(6) by amending paragraph (7) to read as follows:

"(7) 'undertaking' means any project, activity, or program wholly or in part under the direct or indirect jurisdiction of a Federal agency, including but not limited to those carried out by or on behalf of such agency, those planned or carried out with Federal financial or technical assistance, those requiring a Federal permit, license, guarantee, approval, or other entitlement, and those planned or carried out with State or local assistance or subject to State or local regulation where the administration of such assistance or regulation is assisted by a Federal agency or must meet Federal standards."

(7) by amending paragraph (8) to read as follows:

"(8) 'preservation' or 'historic preservation' includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, study, interpretation, reconstruction, and education and training regarding the foregoing activities, or any combination of the foregoing activities."

(8) by amending paragraph (13) to read as follows:

"(13) 'historic preservation review commission' in section 101(c) means a board, council, commission, or other similar collegial body which is established by State or local legislation as provided in section 101(c), and the members of which are appointed, unless otherwise provided by State or local legislation, by the chief elected official of the jurisdiction concerned from among—

"(A) professionals in the disciplines of architecture, history, architectural history, planning, prehistoric and historic archaeology, folklore and cultural anthropology, or related disciplines, to the extent such professionals are available in the community concerned; and

"(B) such other persons as have demonstrated special interest in or knowledge of history, architecture, or related disciplines and will provide an adequate and qualified commission."; and

(7) by adding at the end thereof the following new paragraphs:

"(14) 'Advisory Council' means the Advisory Council on Historic Preservation established by section 201.";

"(15) 'designation' under section 101(c) means the identification and registration of properties for protection that meet established criteria for significant historic and prehistoric resources within local jurisdictions.

"(16) 'Indian land manager' under title I of this Act means the official of an Indian tribe having primary management authority over lands under the tribe's jurisdiction;

"(17) 'Indian lands' means Indian country as defined in section 1151 of title 18, and to the extent not otherwise included in such definition, all lands conveyed or interim conveyed to Alaska Native villages and regional corporations pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

"(18) 'protection', when used in section 101(c), means a local review process authorized by State or local legislation for proposed demolition, changes, or other action that may affect historic properties designated pursuant to section 101(c).

"(19) 'traditional cultural authority' means an individual in a Native American group or other social or ethnic group who is recognized by members of the group as an expert on the group's traditional history and cultural practices;

"(20) 'certified local government' means a local government whose local historic preservation program has been certified by a State Historic Preservation officer pursuant to section 101(c).".

SEC. 113. AMENDMENT OF DEFINITIONS IN THE ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979.

(a) Section 3 of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) The term 'archaeological resource' means a historic property whose significance is derived in whole or in part from its past or potential contribution to the archaeological study of history or prehistory.";

(2) by amending paragraph (2) to read as follows:

"(2) The term 'Federal land manager' means, with respect to any public lands, the head of an agency or instrumentality of the United States having primary management authority over such lands. In the case of Indian lands over which both a Federal land manager and an Indian land manager have management authority, the Indian land manager shall have primary management authority for purposes of this Act and the National Historic Preservation Act (16 U.S.C. 470 et seq.), but the Federal land manager shall remain subject to the requirements of this Act and the National Historic Preservation Act (16 U.S.C. 470 et seq.). In the case of public lands or Indian lands with respect to which no Federal or Indian land manager has primary management authority, such term means the Secretary of the Interior. With the consent of the Secretary of the Interior, the responsibilities under this Act of the head of an agency or instrumentality of the United States with respect to any land may be delegated in whole or in part to the Secretary of the Interior, in which case the term 'Federal land manager' means the Secretary of the Interior.";

(3) by amending paragraph (3) to read as follows:

"(3) The term 'public lands' means—

"(A) lands which are owned and administered by the United States as part of—

"(i) the National Park System;

"(ii) the National Wildlife Refuge System; or

"(iii) the National Forest System; and

"(B) all other lands the fee title to which is held by the United States, other than lands on the outer continental shelf.";

(4) by amending paragraph (4) to read as follows:

"(4) The term 'Indian lands' means Indian country as defined in section 1151 of title 18, United States Code, and to the extent not otherwise included in such definition, all lands conveyed or interim conveyed to Alaska Native villages and regional corporations pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).";

(5) by amending paragraph (5) to read as follows:

"(5) The term 'Indian tribe' or 'tribe' means any Indian tribe, band, nation, or other organized group or community, including any Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that is recognized as eligible for the special programs and services provided by the

United States to Indians because of their status as Indians.";

(6) by amending paragraph (7) to read as follows:

"(7) The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau."; and

(7) by adding at the end thereof the following new paragraphs:

"(8) The term 'Advisory Council' means the Advisory Council on Historic Preservation established by section 201 of the National Historic Preservation Act (16 U.S.C. 470i).

"(9) The term 'Archaeology Advisory Board' means the Archaeology Advisory Board established by section 21.

"(10) The term 'artifact' means material contained in or derived from an archaeological resource or other historic property that was used by those who created or used such property during its period of historical significance, for example pottery, stone carvings, weapons, tools, and articles of personal adornment, architectural remains and the remains of foodstuffs and the byproducts of tool manufacture.

"(11) The term 'cultural affiliation' means a relationship between a modern group of people and a historic or prehistoric group based on cultural similarities and reflecting the cultural derivation of the modern group from the historic or prehistoric group, whether or not biological relationships can be demonstrated.

"(12) The term 'Cultural Property Advisory Committee' means the Cultural Property Advisory Committee established by section 306 of the Convention on Cultural Property Act (19 U.S.C. 2605).

"(13) The term 'descendant' means a living person or group evidenced by biological, archaeological, anthropological, folkloric, historical, or other research to be descended from a historic or prehistoric group of people.

"(14) The term 'grave goods' means any object that was found in the grave and appears to have been deliberately placed in association with the human remains.

"(15) The term 'historic property' or 'historic resource' means a prehistoric or historic district, landscape, site, building, structure, or object listed on or eligible for listing on the National Register, including artifacts, records, and material remains related to such a property or resource.

"(16) The term 'human remains' means a human body or part of a human body in skeletal, fossil, mummified, unmummified, or other form.

"(17) The term 'Indian land manager' under title I of this Act means the official of an Indian tribe having primary management authority over lands under the tribe's jurisdiction.

"(18) The term 'material' means a substance contained in or removed from an archaeological resource, such as artifacts, soil, carbonized wood, marine shells, plant pollen, and animal bones.

"(19) The term 'traditional cultural authority' means a person in a Native American group or other social or ethnic group who is recognized by members of the group as an expert on the group's traditional history and cultural practices.".

SEC. 114. ARCHAEOLOGY ON FEDERAL AND TRIBAL LANDS.

The Archaeological Resources Protection Act of 1979 is amended by striking sections 4 and 5 (16 U.S.C. 470cc and dd) and inserting the following:

"ARCHAEOLOGY ON FEDERAL AND TRIBAL LANDS

"SEC. (4)(a)(1) The Advisory Council shall promulgate regulations authorizing Federal and Indian land managers to issue permits to individuals or organizations (including government agencies when not acting pursuant to section 106 or 110 of the National Historic Preservation Act (16 U.S.C. 470f and 470h–2) for any activities that may result in the disturbance of archaeological resources on Federal or Indian lands, including the testing and excavation of such resources and any activities associated with the identification of such resources that may disturb them or expose them to disturbance.

"(2) An application for a permit shall provide information on the time, scope, location, and specific purpose of the proposed work.

"(3) A permit shall—

"(A) specify terms and conditions of the excavation;

"(B) name the person or persons who will be responsible for complying with them;

"(C) and include—

"(i) a program for conservation of recovered specimens;

"(ii) arrangements for curation of collected specimens with a particular accredited facility, or a facility that meets Federal curation regulations and standards; and "(iii) authorization for the Federal land manager to revoke the permit if the terms of the permit are violated.

"(4) A permit may be granted when a Federal land manager, under regulations promulgated by the Advisory Council, determines that—

"(A) the applicant is qualified by meeting all professional standards to conduct the permitted activity;

"(B) the activity will contribute to scientific knowledge or protect an archaeological resource;

"(C) any artifacts and other material removed from public lands will remain the property of the United States, subject to final disposition standards established by the Advisory Council consistent with section 19;

"(D) the applicant—

"(i) presents, and will ensure implementation of, a plan for the conservation and curation of recovered materials that require conservation and curation in accordance with the disposition standards established pursuant to paragraph (3);

"(ii) demonstrates that the applicant has access to appropriate conservation expertise; and

"(iii) demonstrates that all recovered materials requiring conservation and curation, and all associated records and documents, will be conserved and curated by an appropriate facility;

"(E) the activity takes into account applicable land management plans; and

"(F) when the proposed activity is on Indian land, the applicant has obtained the consent of the Indian land manager.

"(b)(1) When a Federal authority responsible for considering issuance of a permit pursuant to subsection (a), or for any undertaking subject to review under section 106 of the National Historic Preservation Act (16 U.S.C. 470f), is notified or otherwise has reason to believe that the activity that is the subject of a permit application, or an undertaking, may affect a property of cultural importance to an Indian tribe or other Native American group, or the traditional religious practices of such a group, the Federal authority shall ensure that the potentially affected group is notified and consulted to resolve any objections it may have to the action proposed, and shall take any such objection into account in making a final decision.

"(2) When sections 106, 110(b), 110(g), 110(k), 111 or 304 of the National Historic Preservation Act (16 U.S.C. 470f, 470h-2(b), 470h-2(g), 470h-2(k), 470h-3, and 470w-3) is applicable, consultation and consideration under paragraph (1) shall be part of the review pursuant to those provisions.

"(c)(1) A permit issued pursuant to subsection (a) may be suspended by the Federal or Indian land manager upon the manager's determination that the permittee has violated section 106(a)(1) of the National Historic Preservation Act (16 U.S.C. 470f(a)(1)) or subsection (a) of this section.

"(2) A permit issued pursuant to subsection (a) may be revoked by a Federal or Indian land manager upon assessment of a civil penalty against the permittee or upon conviction of the permittee under section 7.

"(d)(1) When an Indian tribe has an ordinance regulating the excavation and removal of archaeological resources that includes procedures for the issuance of permits, no Federal permit shall be required under subsection (a) if—

"(A) the tribe requests that the tribal permit be substituted for the Federal permit, and

"(B) the Advisory Council determines that the tribal ordinance and permit procedures are consistent with, and provide protection substantially equal to, those provided by this Act.

"(2) No permit shall be required under subsection (a) or under section 3 of the Act entitled "An Act for the preservation of American antiquities", approved June 8, 1906 (16 U.S.C. 432), for the excavation or removal by an Indian tribe or by a member of an Indian tribe of an archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under subsection (a).

"(3) A permit for the excavation or removal of an archaeological resource located on Indian lands, applied for in the absence of a tribal law regulating the excavation or the removal of archaeological resources—

"(A) may be granted only after obtaining the consent of the Indian tribe having jurisdiction over such lands and of the individual Indian landowner if the lands are not in tribal ownership; and

"(B) shall include such terms and conditions as may be requested by such Indian tribe or landowner.

"(e)(1) No permit or other permission shall be required under section 3 of the Act entitled "An Act for the preservation of American antiquities", approved June 8, 1906 (U.S.C. 432), for an activity for which a permit is issued under subsection (a).

"(2)(A) A permit issued under the Act entitled "An Act for the preservation of American antiquities", approved June 8, 1906, shall remain in effect according to its terms and conditions after the date of enactment of the National Historic Preservation Policy Act of 1989.

"(B) No permit under subsection (a) shall be required to carry out any activity authorized under a permit issued under the Act entitled 'An Act for the preservation of American antiquities', approved June 8, 1906, before the date of enactment of the National Historic Preservation Policy Act of 1989 which remains in effect as provided in subparagraph (A), and nothing in the National Historic Preservation Policy Act of 1989 shall modify or affect any such permit.

"(f) Issuance of a permit in accordance with this section and applicable regulations shall constitute compliance with section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

"(g) On the written request of the Governor of a State, a Federal land manager shall issue a permit under this section for the purpose of conducting archaeological research, excavation, removal, and curation, on behalf of the State or its educational institutions, to such Governor or to a designee that the Governor deems qualified to carry out this section.

"(h) On the written request of the tribal Chairman of an Indian tribe, a Federal land manager shall issue a permit under this section for the purposes of conducting archaeological research.".

SEC. 115. PROHIBITION OF UNAUTHORIZED ARCHAEOLOGY AND TRANSACTIONS INVOLVING ARCHAEOLOGICAL RESOURCES AND PENALTIES FOR VIOLATION.

The Archaeological Resources Protection Act of 1979 is amended by striking sections 6, 7, and 8 (16 U.S.C. 470ee, 470ff, and 470gg) and inserting the following new sections:

"PROHIBITION OF UNAUTHORIZED ARCHAEOLOGY AND TRANSACTIONS INVOLVING ARCHAEOLOGICAL RESOURCES.

"SEC. 6. (a) It is unlawful to—

"(1) excavate, remove, damage, destroy, or otherwise alter or deface; or

"(2) attempt, and abet, counsel, solicit, procure, or employ another person to excavate, remove, damage, or otherwise alter or deface,

an archaeological resource located on public lands or Indian lands unless such activity is pursuant to—

"(A) section 106 of the National Historic Preservation Act (16 U.S.C. 470f); or

"(B) a permit under section 4 of this Act.

"(b) It is unlawful to—

"(1) sell, purchase, exchange, transport, or receive; or

"(2) offer, attempt, aid, abet, counsel, solicit, procure, or employ another person to sell, purchase, exchange, transport or receive,

an archaeological resource if the archaeological resource was excavated or removed in violation of subsection (a) or any provision, rule, regulation, ordinance, or permit in effect under Federal, State, tribal, or local law.

"(c) Subsection (b) does not apply with respect to an archaeological resource that was in the lawful possession of a person prior to October 31, 1979.

"PENALTIES

"SEC. 7. (a) A person, including a person acting in an official capacity, who knowingly violates subsection (a) or (b) of section 6, when the archaeological resource involved in the violative act (or group of archaeological resources involved in the violative act) is repaired, restored, and returned to its proper place at a cost (including stabilization, research, interpretation, and other costs) of less than $500, shall be fined not more than $20,000 or imprisoned not more than 1 year, or both.

"(b) A person, including a person acting in an official capacity, who knowingly violates subsection (a) or (b) of section 6, when the archaeological resource involved in the violative act (or group of archaeological resources involved in the violative act) is repaired, restored, and returned to its proper place at a cost (including stabilization, research, interpretation, and other costs) of $500 or more, or when the archaeological resource (or group of archaeological resources) cannot be or for any reason is not repaired, restored, and returned to its proper place, shall be fined not more than $50,000 or imprisoned not more than 2 years, or both.

"(c) In the case of a second or subsequent conviction for violation of subsection (a) or (b) of section 6, a person shall be fined not more than $100,000 or imprisoned not more than 5 years, or both.

"(d)(1) The Advisory Council, in consultation with the Department of Justice, shall promulgate regulations for the assessment and collection of civil fines on persons who violate any provision of this Act, including those acting in an official capacity.

"(2) The civil fines authorized by paragraph (1) may be assessed in addition to the penalties imposed pursuant to subsections (a), (b), and (c).

"(e)(1) A fine recovered under this Act shall be applied to the cost of restoration, repair, return, stabilization, research, and interpretation of the archaeological resource involved, and to the disposition of any human remains, except that—

"(A) when the archaeological resource is on or was removed from Indian lands the fine shall be paid over to the appropriate tribe (or to the appropriate

Indian landowner in any case in which there is no tribe having jurisdiction); and

"(B) when the archaeological resource in question has been destroyed or damaged beyond restoration they may be applied to the cost of restoration, repair, return, stabilization, research and interpretation of a similar archaeological resource.

"(2) A fine in excess of the amount required to restore an archaeological resource involved in the violation for which the fine was imposed shall be paid into the Historic Preservation Fund.

"(f) Archaeological resources involved in a violation, photographs, drawings, notes, and other records made in connection with a violation, and vehicles and equipment used in connection with a violation may be forfeited to the United States or to a State, Indian tribe, or municipality.

"(g) The Advisory Council may offer a reward, not to exceed $1,000, to a person who furnishes information leading to a conviction or assessment of a civil penalty for violation of this Act.".

SEC. 116. ARCHAEOLOGICAL RESEARCH PRIORITIES.

The Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.) is amended by adding at the end thereof the following new section:

"ARCHAEOLOGICAL RESEARCH PRIORITIES

"SEC. 15. (a)(1) In consultation with the Archaeology Advisory Board, the Advisory Council shall establish and periodically revise national priorities for archaeological research.

"(2) Priorities established pursuant to paragraph (1) shall address significant questions in anthropology, history, and other disciplines which can be addressed with archaeological data.

"(3) The Advisory Council may assemble regional, national, and international study groups to assist in the formulation of priorities under paragraph (1) and shall take into account relevant priorities established in State historic preservation plans.

"(b)(1) In consultation with the Archaeology Advisory Board, the Advisory Council shall establish an appropriate number of Regional Archaeological Review Groups, comprised of representatives of national, State, and/or regional archaeological organizations, other archaeologists, State Historic Preservation Officers, Tribal Historic Preservation Officers, and other interested parties.

"(2) Regional Archaeological Review Groups established pursuant to paragraph (1) shall translate archaeological research priorities into regional terms by identifying and specifying regional research problems whose answers might contribute to addressing each priority.

"(c)(1) Federal agencies shall ensure that scopes of work for large-scale survey, planning, and data recovery projects undertaken or required in connection with fulfillment of their responsibilities under this Act, the National Historic Preservation Act (16 U.S.C. 470 et. seq.), and title IV of the National Historic Preservation Act Amendments of 1980 (16 U.S.C. 470a-1 470a-2) require archaeologists who propose to undertake such projects to specify which national priorities and regional research problems they propose to address and which they do not, explain how the work proposed will relate to the selected priorities and problems, and justify their selections.

"(2) The results of each project described in paragraph (1) shall be reported to the Advisory Council, State Historic Preservation Officers, and Tribal Historic Preservation Officers, as appropriate.

"(d)(1) The Advisory Council shall coordinate the organization of data produced by survey, planning, and data recovery projects that address national priorities and regional problems pursuant to subsection (c), and periodically report to the President, Congress, relevant research communities, and the public on the results of such work.

"(2) All Federal agencies shall cooperate with the Advisory Council in carrying out its coordinative activities under paragraph (1).

SEC. 117. INTERNATIONAL CONFERENCE ON ANTIQUITES TRADE.

The Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.) is amended by adding at the end thereof the following new section:

"INTERNATIONAL CONFERENCE ON ANTIQUITIES TRADE

"SEC. 16. (a) The Advisory Council shall, in consultation with the Cultural Property Advisory Committee, call for and organize United States participation in an international conference on the international antiquities trade.

"(b) The conference shall focus on—

"(1) providing for adequate controls, enforcement, and incentives to ensure that traded artifacts are the products of properly conducted excavations; and

"(2) promoting an exchange between nations to enhance public knowledge of each nation's cultural heritage.

"(c) Invitations to the conference shall be extended to national governments, as well as to representatives of archaeological organizations, public and private museums, arts and antiquities dealers, and private collectors.

"(d) The goal of the conference shall be to have in place an effective program for controlling looting and trafficking in stolen artifacts in time for the celebration of the 500th Anniversary of the Columbus Discovery Voyage in 1992.

SEC. 118. ARCHAEOLOGISTS' PROFESSIONAL STANDARDS.

The Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.) is amended by adding at the end thereof the following new section:

"ARCHAEOLOGISTS' PROFESSIONAL STANDARDS

"SEC. 17. (a)(1) Archaeologists who wish to do archaeological work—

"(A) for or under contract with the Federal Government;

"(B) for beneficiaries of Federal assistance, permits or benefits under this Act; or

"(C) for the registration of antiquities program established by section 20,

shall meet professional qualifications standards established by the Advisory Council and agree to abide by professional performance standards.

"(2)(A) Pursuant to subsection (a)(1) the Advisory Council shall establish professional qualifications and performance standards for archaeologists and procedures for assuring that they are met and abided by;

"(B) In establishing qualifications and standards pursuant to subparagraph (A), the Advisory Council shall take into account and, where appropriate, utilize the pertinent standards and certification systems of international, national, State, and local archaeological organizations.

"(b) In establishing qualifications and standards pursuant to subparagraph (A), the Advisory Council shall consult with the Archaeology Advisory Board, the Society of Professional Archaeologists, the Society for American Archaeology, the Society for Historical Archaeology, the Smithsonian Institution, and other interested parties.

SEC. 119. ARCHAEOLOGY ON PRIVATE LAND.

The Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.) is amended by adding at the end thereof the following new section:

"ARCHAEOLOGY ON PRIVATE LAND

"SEC. 18. In order to promote the preservation of archaeological resources on private land that are eligible for nomination to the National Register, the Advisory Council shall promulgate regulations to ensure that each State historic preservation program required by section 101(b) of the National Historic Preservation Act (16 U.S.C. 470a(b)) includes a plan to—

"(1) identify locations of archaeological resources on private land that have a demonstrated or likely research significance;

"(2) provide information to the owners of such resources about the significance of the archaeological resources, the need for protection of such resources, and the available means for protection;

"(3) encourage owners to preserve archaeological resources in place, and offer to the owners of such resources information on the tax and grant assistance available for the donation of the resources or of a preservation easement of the resources; and

"(4) encourage owners who are undertaking excavations to—

"(A) conduct excavations and analyses that meet the standards for Federally-sponsored excavations established pursuant to this Act;

"(B) register artifacts found within the archaeological resource by the antiquities registration program established by section 20;

"(C) donate or lend artifacts with a demonstrated extreme or unique significance in current or likely research to an appropriate research institution; and

"(D) allow access to artifacts for research purposes.

SEC. 120. HUMAN REMAINS AND ASSOCIATED GRAVE GOODS.

The Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.) is amended by adding at the end thereof the following new section:

"HUMAN REMAINS AND ASSOCIATED GRAVE GOODS

"SEC. 19. (a) Each Federal agency and each State, tribal, and local historic preservation program that receives assistance under this Act or the National Historic Preservation Act (16 U.S.C. 470 et seq.) shall—

"(1) adopt standard policies and procedures developed by the Advisory Council; or

"(2) adopt policies and procedures of its own,

for the protection and disposition of human remains and associated grave goods that may be subject to disturbance by land use and development, natural causes, archaeological excavation, and other factors.

"(b) Policies and procedures adopted pursuant to subsection (a) shall be consistent with the following principles:

"(1) Human remains and associated grave goods, regardless of the ownership of the lands within which they lie, should not be disturbed unless such disturbance is—

"(A) necessary to protect such remains or goods or associated historic properties from imminent destruction;

"(B) essential to a criminal investigation;

"(C) necessary to mitigate the effects of construction, land use, natural erosion, or other factors;

"(D) an element of the planned recovery of an abandoned shipwreck permitted by a State, Indian tribe, or Federal agency; or

"(E) essential for bona fide archaeological or other research permitted by a State, Indian tribe, or Federal agency.

"(2) Human remains and associated grave goods, if they must be disturbed, should be excavated and removed in accordance with appropriate archaeological methods of recovery and documentation, developed in consultation with—

"(A) descendants of the deceased represented by such remains, if possible; and

"(B) archaeological and historic preservation authorities.

"(3) Human remains and associated grave goods that are excavated should be disposed of in a manner that balances respect for the dead, the interests of descendants, and the interests of research. Such disposal may include, but is not limited to, return of the remains, together with title thereto, to descendants, reburial of such remains, preferably in a manner approximating that in which they were originally buried, and retention in perpetuity for study where the needs of scientific research clearly so requires.

(A) Human remains and associated grave goods should be subjected to such timely analyses as are demonstrably needed to address legitimate scientific research questions, except as may be provided for in accordance with subparagraphs (B) and (C).

(B) Where there are living descendants of the deceased persons represented by human remains and associated grave goods, such descendants should determine the manner of disposition of such remains and goods, and determine whether and in what ways such remains and goods may be subjected to scientific analyses after exhumation. Should multiple individuals or groups be identified as descendants, their desires concerning the treatment of human remains and associated grave goods should be weighed according to the relative closeness of their relationships to the deceased.

(C) Where living descendants cannot be identified, decisions regarding the analysis and disposition of such remains and goods should be made by a commission or other entity whose composition and rules of procedure are such that it can give balanced consideration to a variety of factors influencing treatment of such remains and goods, including but not limited to respect for the dead, the interests of landowners, the interests of those having cultural affiliation with the deceased, if any, and the potential importance of the remains and associated grave goods in present and future scientific or other research.

SEC. 121. ARTIFACT REGISTRATION.

The Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.) is amended by adding at the end thereof the following new section:

"ARTIFACT REGISTRATION

"SEC. 20. (a)(1) In order to facilitate the control of interstate and international traffic in antiquities, the Advisory Council shall establish a program for the registration of artifacts removed from archaeological sites in the United States and abroad.

"(2) The program established pursuant to paragraph (1) shall incorporate and not duplicate existing catalog systems in use by agencies, museums, academic institutions, and others.

"(3) Registration under this section shall be mandatory for artifacts removed from Federal land and for artifacts recovered in connection with projects conducted, required, or permitted pursuant to this Act, and shall be voluntary for artifacts recovered in connection with other projects.

"(4) Registration under this section shall be carried out in cooperation with, and may be delegated to, appropriate Federal agencies, State Historic Preservation Officers, Tribal Historic Preservation Officers, local governments, museums, academic institutions, and archaeological organizations.

"(b) Only artifacts recovered in accordance with applicable Federal, State, tribal, and local law shall be eligible for registration, except that artifacts taken in violation of such laws and subsequently recovered by appropriate authorities may be registered.

"(c) In cooperation with other Federal agencies, State Historic Preservation Officers, Tribal Historic Preservation Officers, State, tribal and local governments, and international organizations, the Advisory Council shall seek to discourage interstate and international traffic in unregistered artifacts.

SEC. 122. ARCHAEOLOGY ADVISORY BOARD.

The Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.) is amended by adding at the end thereof the following new section:

"ARCHAEOLOGY ADVISORY BOARD

"SEC. 21. (a) The Archaeology Advisory Board is established to advise the Advisory Council on—

"(1) Federal archaeology policies;

"(2) the definition of standards for professional archaeologists and archaeological studies made pursuant to this Act;

"(3) means of encouraging public appreciation of and interest in archaeology, including the protection of archaeological resources;

"(4) the identification of archaeological research questions having broad relevance to the modern world; and

"(5) the coordination of efforts by Federal agencies and others to address such questions.

"(b) The Archaeology Advisory Board shall be composed of the following persons, appointed by the Chairman of the Advisory Council to serve 4-year terms:

"(1) 2 professional archaeologists specializing in prehistoric archaeology and 2 professional archaeologists specializing in historic archaeology, drawn from lists of such professionals compiled by the Advisory Council in consultation with national professional organizations representing each such field of expertise.

"(2) 2 representatives of Native American interests, drawn from lists compiled by the Advisory Council in consultation with national Native American organizations.

"(3) 1 representative of avocational groups and public organizations interested in archaeology, drawn from lists compiled by the Advisory Council in consultation with such groups and organizations.

"(4) 1 representative of the general public.".

SEC. 123. AMENDMENT OF THE ABANDONED SHIPWRECK ACT OF 1987.

Section 6 of the Abandoned Shipwreck Act of 1987 (43 U.S.C. 2105) is amended by adding at the end thereof the following new subsection:

"(f) Title to Historic Properties in the Exclusive Zone.—(1) To the extent consistent with international law and treaty obligations of the United States, the United States asserts title to shipwrecks and archaeological resources embedded in or lying on the seabed in the Exclusive Economic Zone proclaimed by Proclamation No. 5030 (48 Fed. Reg. 10605; 43 U.S.C. 1453 n.).

"(2) For the purpose of this section, the term 'archaeological resource' has the meaning stated in section (3)(1) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb(1)).

"(3)(A) In the event of disputes and in other appropriate circumstances, the Secretary of the Interior shall determine whether a site or object is a shipwreck or archaeological resource to which title is vested in the United States pursuant to paragraph (1).

"(B) In making a determination pursuant to subparagraph (A), the Secretary of the Interior shall consult with—

"(i) the Archaeological Advisory Board established by section 21 of the Archaeological Resources Protection Act of 1979 with respect to whether a site or object constitutes an archaeological resource; and

"(ii) the Secretary of State with respect to whether the assertion of title to a shipwreck or archaeological resource would be consistent with international law and treaty obligations of the United States.".

TITLE II—STATE HISTORIC PRESERVATION PROGRAMS

SEC. 201. STATE HISTORIC PRESERVATION PROGRAMS.

(a) Revision of Provisions Relating to State Programs.—Section 101(b) of the National Historic Preservation Act (16 U.S.C. 470a(b)) is amended to read as follows:

"(b)(1) A State historic preservation program shall be administered by a State Historic Preservation Officer appointed by the Governor of the State or as State law may otherwise provide.

"(2) A State Historic Preservation Officer shall—

"(A) direct and conduct a comprehensive statewide survey of historic properties that have local, tribal, State, regional, national, or international significance, and maintain inventories of such properties;

"(B) identify and nominate eligible properties to the National Register and as National Historic Landmarks, and administer the application process for such nominations;

"(C) establish a program for the identification of endangered properties listed on or eligible for listing on the National Register, for the notification of the Secretary and other interested parties of such identifications, and for recommending remedial actions to the parties involved;

"(D) prepare and implement a comprehensive statewide historic preservation plan;

"(E) administer the program of Federal assistance for historic preservation within the State;

"(F) advise and assist Federal and State agencies, Indian tribes, and local governments in carrying out their historic preservation responsibilities;

"(G) cooperate with the Advisory Council, the Secretary and other governmental and nongovernmental groups as appropriate to ensure that historic properties are taken into consideration at all levels of planning and development;

"(H) consult with appropriate Federal agencies in accordance with this Act, on—

"(i) Federal undertakings that may affect historic properties; and

"(ii) on the content and sufficiency of any plans developed to reduce or mitigate harm to such properties;

"(I) advise, assist, and evaluate proposals for rehabilitation and historic property protection projects that may qualify for Federal assistance (including grants, loans, and tax incentives) in protecting significant elements of properties listed on or eligible for listing on the National Register;

"(J) provide public information, education, training, and technical assistance relating to Federal and State historic preservation programs;

"(K) cooperate with local governments in the development of local historic preservation programs and assist such programs in becoming certified under subsection (c);

"(L) carry out any additional responsibilities delegated by the Secretary or the Advisory Council, for which the State Historic Preservation Officer shall be fully compensated; and

"(M) enter into contracts or cooperative agreements with qualified Indian tribes, local governments, nonprofit organizations, and educational institutions to carry out all or part of the State's historic preservation responsibilities under this Act.

"(3) A State shall submit its historic preservation program to the Secretary, who shall approve the program if the Secretary determines that the program—

"(A) provides for the appointment of a State Historic Preservation Officer to administer the State's historic preservation program provided for in this Act and for the employment by the State Historic Preservation Officer of such professionally qualified staff as may be necessary for that purpose;

"(B) provides for an adequate and qualified State historic preservation review board, appointed by the State Historic Preservation Officer, which is responsible for reviewing National Register and National Historic Landmark nominations and appeals of such nominations and for assisting and advising the State Historic Preservation Officer as appropriate;

"(C) provides for adequate tribal, local government, and public participation in the State historic preservation program, including the process of recommending properties for nomination to the National Register; and

"(D) demonstrates the intent and capability to carry out the State's preservation responsibilities under this Act in a timely and efficient manner.

"(4) The Secretary shall—

"(A) establish, in consultation with the Advisory Council and the National Conference of State Historic Preservation Officers, regulations for the content, submittal, and approval of State historic preservation programs;

"(B) review periodically the content of decisions of approved State programs to ensure that those programs remain in compliance with this Act, and suspend, if necessary, all or part of the Federal assistance or delegation of authority to any such program found to be in violation until that program does comply with this Act;

"(C) administer a program of matching grants and cooperative agreements to the States to carry out this Act, including the acquisition, preservation, and archaeological treatment of properties listed on the National Register; and

"(D) Not later than 60 days after appropriations become available for the purposes described in subparagraph (C), release a State's allocation, if the State has submitted an approvable application for funds.

"(5) The Secretary and the Advisory Council may delegate to a State Historic Preservation Officer, through contracts and cooperative agreements, all or any part of their authorities within the State—

"(A) to identify and preserve historic properties;

"(B) to determine the eligibility of properties for listing on the National Register;

"(C) to expand the National Register;

"(D) to maintain archaeological data bases;

"(E) to certify eligibility for Federal preservation incentives; and

"(F) to comment on, approve, and enforce actions of Federal, State, and local governments, private individuals, and corporations relating to historic preservation under this Act, the Internal Revenue Code, and other Federal law.

"(6) A delegation of authority shall be made pursuant to paragraph (5) if—

"(A) A State Historic Preservation Officer has requested the additional authority;

"(B) the Secretary has approved the State historic preservation program;

"(C) the State Historic Preservation Officer agrees to carry out the additional responsibilities in a timely and efficient manner acceptable to the Secretary or the Advisory Council, as the case may be; and

"(D) the Secretary or Advisory Council agrees to provide full compensation to the State for the costs of carrying out the additional responsibilities.

"(7) A State historic preservation program in effect under this Act prior to the date of enactment of the National Historic Preservation Policy Act of 1989 shall be considered as an approved program until the earlier of—

"(A) the date on which the Secretary approves a State program under this Act; or

"(B) 3 years after the date of enactment of the National Historic Preservation Policy Act of 1989.

"(8) Any State may carry out all or any part of its responsibilities under this subsection by contract or cooperative agreement with any qualified nonprofit organization or educational institution.".

(b) CONFORMING AMENDMENTS.—(1) Section 103 of the National Historic Preservation Act (16 U.S.C. 470c(b)) is amended to read as follows:

"(a) The Secretary shall, in consultation with the Advisory Council and the National Conference of State Historic Preservation Officers, develop guidelines for the apportionment of and apportion the funds appropriated and made available for contracts, cooperative agreements, and compensatory grants to the States for carrying out this Act, on the basis of need as disclosed in approved State historic preservation plans.

"(b) The Secretary shall notify each State of its apportionment under this subsection within 30 days following the date of enactment of legislation appropriating funds under this Act, and shall expeditiously, but not later than 60 days after appropriations become available for the purposes of this subsection, release a State's allocation if the State has submitted an approvable application for funds.".

(2) Subsection (e) of section 101 of the National Historic Preservation Act (16 U.S.C. 470a(e)) as redesignated by section 301(1), is amended—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2).

TITLE III—TRIBAL HISTORIC PRESERVATION PROGRAMS

SEC. 301. TRIBAL HISTORIC PRESERVATION PROGRAMS.

(a) REVISION OF EXISTING LAW.—Section 101 of the National Historic Preservation Act (16 U.S.C. 470a) is amended—

(1) by redesignating subsections (d), (e), (f), (g) and (h) as subsections (e), (f), (g), (h), and (i); and

(2) by inserting the following new subsection:

"(d)(1) Tribal historic preservation programs shall be administered by a Tribal Historic Preservation Officer appointed by the tribe's chief governing authority or as a tribal ordinance may otherwise provide.

"(2) A Tribal Historic Preservation Officer may assume all or any part of the functions of a State Historic Preservation Officer under subsection (b)(2) with respect to Indian lands of the tribe, if—

"(A) the tribe's chief governing authority so requests;

"(B) the Tribal Historic Preservation Officer provides the Secretary with a plan describing how the functions the Tribal Historic Preservation Officer proposes to assume will be carried out; and

"(C) the Secretary approves the plan.

"(3) In considering a Tribal Historic Preservation Officer's request to assume preservation functions under paragraph (2), the Secretary shall consult with and take into account the views of the appropriate State Historic Preservation Officers, the Advisory Council, other Indian tribes, local governments, Federal agencies, and the public.

"(4) Federal funds available to a tribe may be used as tribal matching funds for the purposes of the tribe's conduct of any responsibilities assumed pursuant to paragraph (2).

"(5) In consultation with—

"(A) Indian tribes and Native American organizations;

"(B) the Advisory Council; and

"(C) the National Conference of State Historic Preservation Officers,

the Secretary shall establish and implement procedures for carrying out section 203(b)(5) with respect to tribal programs that assume responsibilities under this subsection.

"(6) At the request of a tribe whose preservation program has been approved to assume responsibilities pursuant to paragraph (2), and after consultation with appropriate State Historic Preservation Officers, the Advisory Council, other Indian tribes, local governments, Federal agencies, and the public, the Secretary may delegate to such tribe, through a contract or cooperative agreement, all or any part of the authorities described in subsection (b)(5) on Indian lands of the tribe, if—

"(A) the Secretary agrees to provide full compensation to the tribe for the costs of carrying out such delegated responsibilities;

"(B) the Secretary ensures that the tribal historic preservation program is sufficient to carry out the contract or cooperative agreement and this Act; and

"(C) the contract or cooperative agreement specifies any continuing responsibilities of the Secretary or of a State Historic Preservation Officer and provides for appropriate participation by—

"(i) the tribe's traditional cultural authorities;

"(ii) representatives of other Indian tribes whose traditional lands are under the jurisdiction of the tribe to which the Secretary's preservation responsibilities are delegated; and

"(iii) the public.

"(7) The Advisory Council may enter into an agreement with an Indian tribe to permit undertakings on Indian lands of the tribe to be reviewed under tribal historic preservation procedures in place of review under procedures promulgated by the Advisory Council to govern compliance with section 106 of the National Historic Preservation Act (15 U.S.C. 470f), if the Advisory Council, after consultation with—

"(A) the tribe;

"(B) the Bureau of Indian Affairs;

"(C) the Secretary,

"(D) appropriate State Historic Preservation Officers;

"(E) other Indian tribes; and

"(F) the public,

determines that the tribal historic preservation procedures will afford historic properties protection equivalent to that afforded by the Advisory Council's procedures.

"(8) At the request of a tribe whose preservation program has been approved to assume responsibilities pursuant to paragraph (2), and with the concurrence of the Advisory Council, the Bureau of Indian Affairs shall delegate any or all of its preservation responsibilities on Indian lands of a tribe to the Tribal Historic Preservation Officer, or, when a tribe so requests, to a State.

"(9)(A) Properties of traditional religious and cultural importance to an Indian tribe or other Native American group shall be considered for inclusion on the National Register.

"(B) In planning an undertaking in compliance with section 106, a Federal agency shall consult with an Indian tribe that may attach religious and cultural values to properties described in subparagraph (A).

"(10) An Indian tribe shall have the right of first refusal on all properties of the Bureau of Indian Affairs and the Indian Health Service transferred under section 111.".

(b) CONFORMING AMENDMENTS.—(1) Section 102(a)(3) of the National Historic Preservation Act (16 U.S.C.

470b(a)(3)) is amended by striking "101(d) (1) and (2)" and inserting "101(e) (1) and (2)".

(2) Section 110(c) of the National Historic Preservation Act (16 U.S.C. 470h–2(c)) is amended by striking "101(g)" and inserting "101(h)".

TITLE IV—LOCAL HISTORIC PRESERVATION PROGRAMS

SEC. 401. REVISION OF PROVISIONS RELATING TO LOCAL PROGRAMS.

Section 101(c) of the National Historic Preservation Act (16 U.S.C. 470a(c)) is amended to read as follows:

"(c)(1) In order to—

"(A) extend the partnership that carries out the national historic preservation program set forth in this Act;

"(B) strengthen the program through the development of planning and protection mechanisms at the local level;

"(C) provide a more structured opportunity for citizens at the local level to participate in program activities and contribute to the reconciliation of preservation issues; and

"(D) ensure that locally significant resources are adequately incorporated into the national program, the Secretary shall require State programs approved under subsection (b) to provide a mechanism for the certification by the State Historic Preservation Officer of local governments to carry out this Act.

"(2) In order to be certified pursuant to subsection (a), a local government must maintain a program that provides for the preservation of historic properties in the local government's decision-making regarding planning, land use, and development.

"(3) Unless waived by the Secretary based on the particular nature of a local government's historic resources, statutory authority, organizational structure, or other cause, a local historic preservation program shall provide for—

"(A) maintenance of an adequate and qualified historic preservation review commission;

"(B) enforcement of State or local legislation regarding the designation and protection of historic properties;

"(C) an adequate system for the identification of historic properties;

"(D) public participation in the local historic preservation program; and

"(E) coordination with the State historic preservation plan.

"(4) State Historic Preservation Officers shall encourage certified local governments to include in their preservation programs provisions for—

"(A) preservation education for the general public and in local school systems;

"(B) systems to ensure that projects with the potential to affect historic properties are subjected to review to minimize adverse effects and promote the appropriate uses of, and design consistency with, historic properties;

"(C) coordination and cooperation with tribal historic preservation programs; and

"(D) active participation in State and Federal historic preservation programs.

"(5) A local government, whether certified or not, may—

"(A) appeal to the Secretary a denial of certification by a State Historic Preservation Officer;

"(B) appeal to the Secretary the local government's allocation from the Historic Preservation Fund; and

"(C) comment on, or in the case of a certified local government, object to, a proposed nomination for listing of a property within its jurisdiction on the National Register.

"(6) With respect to local historic preservation programs, a State Historic Preservation Officer shall—

"(A) assist in the development of and certify local government preservation programs meeting the requirements stated in paragraph (3);

"(B) delegate through contracts or cooperative agreements to certified local governments all or any part of the State's authority under this Act in the local jurisdiction, if—

"(i) the certified local government has requested the additional authority;

"(ii) the certified local government agrees to carry out the additional responsibilities in a timely and efficient manner acceptable to the State Historic Preservation Officer and, in circumstances in which the Secretary or the Advisory Council is responsible for oversight of or coordination with the State Historic Preservation Officer's responsibilities, the Secretary or the Advisory Council; and

"(iii) to the extent agreed upon between the certified local government and the State Historic Preservation Officer, the State Historic Preservation Officer agrees to provide compensation to the certified local government for the costs of carrying out the additional responsibilities; and

"(C) notify the owner, the applicable chief local elected official and the local historic preservation commission of any property within the jurisdiction of the local government that may be considered by the State for nomination to the National Register or as a National Historic Landmark.

"(7) The following procedure shall be used in the nomination for listing on the National Register of a property in the jurisdiction of a certified local government:

"(A) Notification pursuant to paragraph (6)(C) shall be given before the State Historic Preservation Officer formally considers the property for nomination.

"(B) The chief local elected official may transmit a recommendation and the local historic preservation commission's report to the State Historic Preservation Officer not later than 60 days after receipt of notification pursuant to paragraph (6)(C).

"(C) Unless both the chief local elected official and the local historic preservation commission object, the State Historic Preservation Officer may proceed with the nomination.

"(D) If both the chief local elected official and the local historic preservation commission object, the State

Historic Preservation Officer shall take no further action, unless—

"(i) not later than 60 days after receipt of such objection, the State Historic Preservation Officer files an appeal with the Secretary; and

"(ii) the Secretary decides that processing of the nomination should continue notwithstanding the objection of the chief local elected official and the local historic preservation commission.

"(8) The Secretary may provide direct assistance to a certified local government to carry out the purposes of this Act.".

TITLE V—EDUCATION AND TRAINING

SEC. 501. EDUCATION AND TRAINING PROGRAM SCOPE.

Section 101(i) of the National Historic Preservation Act, as redesignated by section 301, is amended to read as follows:

"(i)(1) In consultation and cooperation with—

"(A) the Department of Education;

"(B) the Department of the Interior;

"(C) the Department of Labor;

"(D) the National Conference of State Historic Preservation Officers;

"(E) the National Trust for Historic Preservation;

"(F) the Smithsonian Institution;

"(G) the Society for American Archaeology; and

"(H) other Federal, tribal and non-Federal organizations,

develop and implement a comprehensive preservation education and training program.

"(2) The education and training program described in paragraph (1) shall include—

"(A) new standards and increased preservation training opportunities for Federal workers involved in historic preservation-related functions;

"(B) increased historic preservation training opportunities for other Federal, State, tribal and local government workers, students, and individuals with an avocational interest in historic preservation;

"(C) inclusion of provisions in federally sponsored survey and excavation work to afford an opportunity for the participation of avocational archaeologists;

"(D) special assistance to historically Black colleges and universities and to tribal colleges and colleges with a high enrollment of American Indians to establish historic preservation degree programs;

"(E) dissemination of information on historic preservation technologies;

"(F) implementation of a coordinated national informational and media program (such as public service announcements) on historic preservation topics;

"(G) distribution of model preservation curricula for elementary schools, high schools, and adult education programs;

"(H) historic preservation internship programs for United States and foreign students;

"(I) provision of training and skill development in trades and crafts related to historic preservation in existing Federal training and development programs; and

"(J) support for analysis, curation, interpretation, and display related to historic preservation.

"(3) Recipients of grants from the Historic Preservation Fund, including States, Indian tribes, local governments, and the National Trust for Historic Preservation, shall carry out appropriate forms of education and training as components of their federally assisted programs, and shall ensure that education and training are integrated into the activities of subgrantees as appropriate.".

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Senator **Bumpers**. Senator Fowler has not yet arrived, so we will begin with Mr. Jerry Rogers, Associate Director for Cultural Resources of the National Park Service.

STATEMENT OF JERRY ROGERS, ASSOCIATE DIRECTOR, CULTURAL RESOURCES, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. **Rogers**. Mr. Chairman, thank you very much.

Senator **Bumpers**. Jerry, if you will hold just a moment, I think it probably would be appropriate also to have Dr. Robert D. Bush, Executive Director of the Advisory Council, and Deputy Chief Jeff M. Sirmon of the Forest Service. Would you also take a seat?

Jerry, I am sorry. Go ahead.

Mr. **Rogers**. Thank you very much, Mr. Chairman. It certainly is a privilege to be able to present the Department's views here today and, I might add, a privilege to appear in the company of such a distinguished group of witnesses as you will have all afternoon.

My formal statement I hope you will enter into the record as it is written.

Senator **Bumpers**. It will be.

Mr. **Rogers**. Let me simply hit a few high points to conform to your time rule.

As the formal statement indicates, the Department of the Interior opposes very strongly several elements of both S. 1578 and S. 1579, particularly the sweeping organizational changes that would impact the Department of the Interior, the Advisory Council on Historic Preservation, and even the organizational nature of the proposed Center for Preservation Technology.

We believe that these organizational modifications would create administrative impediments that would make the historic preservation program harder to administer, not easier.

I have compiled a list of 25 references in S. 1579 that I would be happy to supply to you in which the words "Advisory Council on Historic Preservation" in our view should be changed to be "Department of the Interior", just to let you know the scope of the reorganizational aspects of S. 1579.

We are also concerned about aspects of the bills that would eliminate or damage the concept of partnership in historic preservation, and particularly I want to emphasize the concept of full compensation for work done by the various partners.

We also would oppose the provisions on page 41 of S. 1579 and on page 64 that would require the issuance of permits upon demand or delegation of authority upon demand. We also recommend strongly against the enactment of extreme detail into law that is already well handled in regulation or could be well handled in that way.

We also would like to express our concern for provisions that deal with extending protection to shipwrecks in the Exclusive Economic Zone. As our statement says, we defer to the State Department on that issue and we have alerted them to it, but we have not had a response. We would like to recommend that if measures such as that were adopted that you limit them to abandoned or historic shipwrecks. We do not want to become the heir to some sunken supertanker.

We would also like to recommend that we allow the Abandoned Shipwrecks Act, recently passed, a little time to work. We think it is a good law.

We are concerned about the provision for artifact registration. Even though we all care very deeply about halting looting of archeological sites, it seems to us that the money and effort that would go into a registration system would take away the opportunities to get money to enforce archeological law and we think a lot less money would go a lot further in expanded enforcement.

There are also technical problems in a few places that we would be happy to work on with staff, should you decide to report out a measure.

Having said all that, we acknowledge merit in certain provisions of the bills. The idea of the preservation advisory committee in S. 1578, if it were to be used by the National Park Service rather than an independent preservation agency, could be extremely useful in including the broad aspects of our national preservation partnership into our policy and procedure-making.

The idea of an archeological advisory board, were it to advise rather than to prescribe certain things, is a good idea, if a way could be found to have it also represent the other disciplines that are important to preservation, such as history, architecture, ethnography, engineering and landscape architecture.

The idea of a center for preservation technology, if we in the National Park Service can operate it in the way we need to rather than having it chartered with an independent board of trustees, could be a very good idea. As I am sure you recall, we have in the National Park System 2,200 statues and monuments and 22,000 historic structures, 50,000 known archeological sites, and these have the same need for preservation technology that the large numbers of historical properties everywhere in the United States have.

We favor such things as including a preservation message along with the owner notification letters and in fact I have given orders to implement that provision already.

We see the need for better protection of certain historic properties, although we have an alternative we would like to be able to discuss with you or staff that would rely upon historical conservation districts for that purpose.

We approve of the notion of strengthening State historic preservation programs and local historic preservation programs. We would like to have the opportunity to do less Federal second-guessing of well-qualified State and local staff people.

We like the idea of a statutory foundation for tribal historic preservation programs. We have started tribal historic preservation programs during this fiscal year and we are very excited about the direction in which that start is going. We can see one thing very clearly, however; the tribal programs are not going to fit immediately into the mold that we have devised over the years for State and local preservation programs. We are going to have to let the tribal programs evolve for a few years into something like them, but perhaps a little bit different. And we are going to have to do it with full respect for the sovereignty of Indian tribes.

We like the idea of improving our ability to deliver education and training. It is an enormous task, but it is very desperately needed.

We do not object at all to the provisions of S. 1579 that deal with human remains and funerary objects. We are taking the recently enacted legislation on the National Museum of the American Indian as policy guidance for the entire Federal Government and we are setting about revising Department of the Interior policy and guidelines to conform to the guidance in that law.

We do want to say one thing, that we acknowledge that on the question of human remains archeological research values and human values do have to be balanced. That is absolutely true. But in our view the human values get a little bit of extra measure in that balance. We are not just dealing with any ordinary source of scientific information.

With that, Mr. Chairman, I would be very happy to answer your questions if I can.

[The prepared statement of Mr. Rogers follows:]

STATEMENT OF JERRY ROGERS, ASSOCIATE DIRECTOR, CULTURAL RESOURCES, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, CONCERNING S.1578 AND S.1579, BILLS PERTAINING TO HISTORIC PRESERVATION

February 22, 1990

Mr. Chairman, I appreciate the opportunity to provide your Committee with the views of the Department of the Interior on S.1578, the proposed "Historic Preservation Administration Act" and S.1579, the proposed "National Historic Preservation Policy Act."

We strongly recommend against the enactment of either bill. If the bills are enacted in their present form, the Department of the Interior, including the National Park Service would recommend that they not be approved by the President. We also understand that the Department of Justice has certain constitutional concerns about these bills, particularly their grant of authority to advisory boards. The Department of Justic will be providing a report to you shortly.

S.1578 and S.1579 would make numerous changes in the laws under which Federal agencies--and to a large extent States and local governments--identify, protect, and manage historic properties in the United States.

S.1578 would establish a new, independent, historic preservation agency and transfer to it the Secretary of the Interior's responsibilities as set forth in the National Historic Preservation Act. Under this Act these responsibilities chiefly include the maintenance of the National Register of Historic Places and the provision of assistance to States and other non-Federal entities by means of financial grants and technical information. The bill would also create two new advisory bodies and transfer to them the functions of the existing Advisory Council on Historic Preservation.

S.1579 would make a number of amendments to existing historic preservation laws. These amendments generally would (1) restate Federal agency responsibilities for historic preservation; (2) restate the procedures and responsibilities for maintaining the National Register, including detailed requirements to be followed in listing properties; (3) establish separate procedures for designating national historic landmarks; (4) establish procedures to be implemented by the Advisory Council, which, for historic properties of critical importance include suspension of Federal assistance and obtainment of court injunctions; (5) establish detailed procedures for issuance of archeological permits on Federal and Indian lands; (6) broaden prohibited activities and increase penalties for violating prohibitions in the Archeological Resources Protection Act; (7) establish new responsibilities in the Advisory Council for archeological research priorities and artifact registration; (8) require Federal agencies and State and local programs that receive Federal assistance to adopt policies and procedures for the protection of human remains; (9) establish an archeology advisory board to advise the Advisory Council; (10) assert title to shipwrecks in the Exclusive Economic Zone; (11) reenact portions of the National Historic Preservation Act to require Federal "compensation" to States and State Historic Preservation Officers for costs of carrying out certain National Register programs; (12) reenact other portions to make revisions in Indian and local governmental historic preservation procedures; and (13) add educational and training requirements to the Secretary's responsibilities under the National Historic Preservation Act.

It has been 10 years since the Congress last addressed historic preservation legislation in a comprehensive way. The 1980 amendments to the National Historic Preservation act added several new authorities--such as technical assistance for cultural resources of all levels of significance, historic property leasing, and others--which are important tools for preservation. While we are prepared to consider some additional changes, based on our experience in administering these programs we see no justification, either in policy or efficiency of management, for the wholesale changes that are proposed in S.1578 and S.1579, and we see the likelihood of serious harm in some of them.

S.1578 -- Creates a separate Historic Preservation Agency.

In 1978, the National Register functions of the National Park Service were transferred administratively to a new agency, the Heritage Conservation and Recreation Service. In 1981, that agency was abolished administratively and the National Register functions were transferred back to the National Park Service. The purposes of the 1981 consolidation were to achieve economies in the utilization of funds, personnel, and equipment and to improve program services. S.1578 would again transfer National Register functions from the National Park Service to a new agency. Such a transfer would cost a great deal of time and money in establishing new administrative support services. It would also separate the National Register function from cultural resources management functions and thereby contribute to differences in terminology, policy, and methodology between the new agency and land/resource managers. Such differences did indeed develop during the period 1978-81. Moreover, the 1978 transfer did not result in any increases in funding or staffing for the management of National Register programs.

We believe, further, that the framers of the National Historic Preservation Act of 1966 showed great wisdom in conceiving an Advisory Council that could stand apart from program operations and render well-rounded unbiased policy advice to the President and the Congress. Not only would Department of the Interior programs be harmed by transfer to a new agency such as conceived by S.1578, but the Advisory Council would lose its independent perspective by assuming the burden of responsibility for programs.

There is a significant need for an increased capability to generate and to disseminate technical information on historic preservation subjects. Such capability needs to be closely tied to and coordinated with the users of the technical information, however. The Center for Preservation Technology that is outlined in S.1578 would itself be an independent entity, governed not by the National Park Service which needs the technical information for its own use and for its Federal, State, local, and private sector partners, but by an independent Board of Trustees. The Service is considering ways in which it might create a

Center for Preservation Technology under existing statutory authority, and we recommend against creation of the independent one envisioned by S.1578. We note that an independent center is only one of two alternatives identified by the Office of Technology Assessment in 1986, the other being the establishment of such a center by the Secretary of the Interior within the Department.

In sum, we see little benefit to be derived from the fragmentation that would result from S.1578 and significant negative effects if it is enacted.

S.1579 -- Introduces questionable new policies.

The changes proposed in S.1579 raise more questions than they answer. We believe, in large part, that existing requirements and procedures are adequate to ensure that historic preservation objectives are met. S.1579 would also introduce several new policies that particularly concern us, among them--

- -- It places significant operational/programmatic authorities in the Advisory Council. The Council should continue in its current role of providing policy advice, and the Secretary of the Interior should administer preservation programs.

- -- It creates a new class of property, property of "critical importance." We are interested in effective protection of historic properties, but injunctive relief should not be authorized until it is well understood what might qualify for this new class of property.

- -- By requiring States to be fully compensated for undertaking certain National Register functions, the bill mistakenly assumes that the States and local governments receive no benefits from Federal agency preservation programs. The States should continue to be assisted by matching grants.

-- It assumes the United States has authority to assert title to shipwrecks in the Exclusive Economic Zone. We are concerned about historic shipwrecks wherever they are located, but we defer to the Department of State in this regard.

In addition, the bill is needlessly detailed, proposing statutory language where implementing regulations would be appropriate or where existing administrative procedures are adequate, such as for designating national historic landmarks.

There are of course, elements within S.1579 that would be desirable if they could be considered apart from the unnecessary and undesirable elements. Since enactment of the National Historic Preservation Act of 1966 the Department of the Interior has had a consistent record of strengthening our State and local partners, and of sharing with them a greater and greater amount of program responsibility proportionate to their increased professional capability. We would like to improve on this partnership. The Department would remain accountable to the President for the proper performance of statutory authorities and would use our State Program Evaluation system for this purpose.

Similarly, we favor a statutory authority for Tribal Historic Preservation Programs. A beginning is being made with a special FY 1990 appropriation for this purpose, but a statutory foundation would strengthen the program. Our support in this area would extend to those provisions in the bill that would regulate the treatment of human remains and funerary objects associated therewith.

In furtherance of this Administration's support for historic preservation, the President's FY 1991 budget proposes $33,665,000 for State and National Trust grants out of the Historic Preservation Fund. In addition, the National Park Service is considering certain limited modifications in existing historic preservation programs to increase efficiency and clarify certain authorities. However, after almost 25 years, we believe the basic Federal historic preservation laws and institutions are sound. The policy and institutional changes that S.1578 and S.1579 would bring about are unnecessary.

This concludes my prepared remarks, Mr. Chairman. I would be pleased to respond to any questions you may have.

Senator **Bumpers**. Thank you. Mr. Sirmon.

STATEMENT OF JEFF M. SIRMON, DEPUTY CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY EVAN DeBLOOIS, HISTORIC PRESERVATION OFFICER, FOREST SERVICE

Mr. **Sirmon**. Thank you, Mr. Chairman. Thank you for the opportunity to offer the Department of Agriculture's views on S. 1578 and 1579.

The Administration strongly opposes the enactment of either of these bills in the present form. We believe the current statutes and regulations concerning the protection of cultural resources are adequate. We are working to strengthen some places where we know there are weaknesses.

Cultural resources are important. They are an important resource. We recognize that. We recognize the difficult job we have with extensive land holdings, which are mostly unsurveyed in terms of cultural resources. We have over 220 professional cultural resource specialists with over 5,000 paraprofessionals taking cultural resources into account in their daily work.

Under S. 1578, the Department of Agriculture coordinates with the Department of the Interior and the Historic Preservation Office now. We think it is working fine. We do not agree that an independent historic preservation agency, should be enacted.

We believe it is inappropriate for an advisory board made up of appointed members to prescribe standards for Federal professional archeologists and archeological studies. Federal professional archeologists are well qualified to prescribe the standards for studies completed under our existing authorities.

We defer to the Department of the Interior on all other provisions of this bill.

Under 1579, we feel that there is adequate coordination now under existing authority. S. 1579 would extend the advisory council's authority far beyond existing review and comment procedures on Federal undertakings. For example, the advisory council would become responsible for setting most of the standards for archeological work on Federal lands.

The archeological council would also receive new authority to enforce its views through suspension notices, remedial actions and professional standards. We believe the current system is logical and workable. Extending the advisory council's role is likely to increase delays and conflicts in addressing historic preservation issues, with little increase in actual preservation activities.

We support some sections, and we can detail these with subsequent statements. But there are one or two sections I would like to make comments on. Section 103 and 118 would not resolve the problems that exist with the current qualifications of Federal archeologists. Transferring these responsibilities to the advisory council does not address this discrepancy.

Section 106, the discretionary authority of the Federal agencies to determine when to withhold cultural resource information, should be retained. It should not be vested in the advisory council. We believe the Federal agencies are in a better position to know the circumstances of the requests for information and to respond in a timely manner. Given the number of routine requests for information from the Forest Service at various levels of the organization, it would be unreasonably burdensome to require consultation with the advisory council each time a request is received.

We oppose the provision in section 111 that would authorize the Advisory Council on Historic Preservation to issue notices of suspension which would require agencies to suspend work on an undertaking until being notified by the Advisory Council that the suspension is lifted. We have literally thousands of activities going on, and very few requests to suspend operations currently, and we think it would be an overkill.

Section 114 would transfer permitting responsibilities now held by the Federal agencies or by the Secretary of the Interior to the Advisory Council on Historic Preservation. Given the present workload and existing staffing levels in the Advisory Council, this action would either require an increase in staffing or dramatic increase in funding.

Section 120 deals with human remains and associated grave contents. This amendment matches very closely our existing procedures and we find that this provision is unnecessary.

We object to requiring the registration of artifacts such as proposed in section 121. There is a great deal of skepticism whether or not this would actually accomplish the objectives for which it is designed.

While we have a lesser concern regarding numerous other provisions of these bills, this concludes our specific comments on the proposed legislation. We have come a long way with our existing statutes. They are working. And we see little need to change.

This completes my statement at this time. I would be pleased to answer any questions.

[The prepared statement of Mr. Simon follows:]

STATEMENT OF
JEFF M. SIRMON, DEPUTY CHIEF
FOREST SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE

Before the
Subcommittee on Public Lands, National Parks and Forests
Committee on Energy and Natural Resources
United States Senate

Concerning
S. 1578, the "Historic Preservation Administration Act of 1989"
and
S. 1579, the "National Historic Preservation Act of 1989"

February 22, 1990

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to offer the Department of Agriculture's views on S. 1578, the "Historic Preservation Administration Act of 1989," and S. 1579, the "National Historic Preservation Policy Act of 1989."

The Administration strongly opposes the enactment of either bill.

The Forest Service has been actively carrying out its responsibilities for the preservation of cultural resources for more than two decades. National Forest System lands are rich in the remains of this Nation's heritage. From camps of the earliest inhabitants of this continent to those of the Civilian Conservation Corps, we find a wide array of important monuments to the past. Our cultural resource program is designed to locate and identify these resources. We conduct surveys on over a million and a half acres each year and identify from 10 to 15 thousand new properties annually. Most of these surveys are conducted on lands scheduled for some kind of activity that might threaten these properties. About 12 percent of the National Forest System lands have been examined in the last 20 years, and over 150,000 prehistoric and historic sites have been located.

After identifying cultural properties, we apply the National Register of Historic Places criteria of significance to determine which properties are deserving of further attention and preservation. Over 30,000 of the properties have been evaluated for significance, and nearly 500 of the 24,000 which have been found to be significant are now listed on the National Register.

Once a property has been determined to be significant, steps must be taken to see that it is protected from activities that would destroy or damage it. If that cannot be accomplished, information about the property must be collected and made available for public examination and use.

We are making a major effort to provide opportunities for the public to learn about and enjoy these resources. Through our "Windows On The Past" program, hundreds of new opportunities have been and are being developed to provide the public with information, historic sites to visit, and chances to participate in the protection, stabilization, and recovery of important cultural resources. The public has demonstrated a high interest in the preservation of our heritage and finds great enjoyment in visiting, experiencing, and learning about the past.

While we consider cultural resource management an important activity, the task is not simple, as National Forest System lands are extensive, mostly unsurveyed, and our resources are limited. There are about 220 professional cultural resource specialists in the agency, and many of them also have other duties to perform. This translates to about a million acres per person for cultural resource responsibilities.

The number of cultural properties identified each year and those evaluated differ by about 80 percent. Thus, the backlog of unevaluated properties increases each year. We have far more opportunities to provide a public experience and promote public understanding and enjoyment of historic properties than we can pursue. However, we believe the current statutes and regulations concerning the protection of cultural resources are adequate. We are working to strengthen our efforts to implement this direction, particularly with respect to training for our employees and the integration of cultural resource activities with our other resource management responsibilities.

S. 1578, the "HISTORIC PRESERVATION ADMINISTRATION ACT OF 1989"

Under existing authority, the Department of Agriculture coordinates with the Department of the Interior and the Advisory Council on Historic Preservation relative to the National Historic Preservation Act.

S. 1578 would establish a Historic Preservation Agency as an independent agency of the United States. In addition, the bill would establish a Preservation Advisory Committee to advise the Preservation Agency on national preservation policy and to assist in coordinating Federal preservation activities. Also, section 7 would establish an Archeology Advisory Board to advise the Preservation Agency on Federal archeology policies and to prescribe standards for professional archeologists and for archeological studies. All the present functions and authorities of the Secretary of the Interior and of the Advisory Council on Historic Preservation now contained in the National Historic Preservation Act would be transferred to the Preservation Agency, the Advisory Committee, and the Archeology Advisory Board, as appropriate.

We object to enactment of section 7, because we believe it is inappropriate for an advisory board made up of appointed members to prescribe standards for Federal professional archeologists and archeological studies. We believe that standards for Federal professional archeologists are more appropriately within the purview of the Office of Personnel Management, with input from Federal Historic Preservation Officers and the Advisory Council. Furthermore, we believe that Federal professional archeologists are well qualified to prescribe the standards for archeological studies completed under our authorities. We defer to the Department of the Interior on all other sections of the bill since their enactment would not directly affect this Department's programs.

S. 1579, the "NATIONAL HISTORIC PRESERVATION POLICY ACT OF 1989"

Under existing authority, the Department of Agriculture coordinates with the Department of Interior and the Advisory Council on Historic Preservation on matters related to the National Historic Preservation Act. The Department of the Interior provides standards and guidelines for the preservation program, and the Advisory Council reviews and comments on the Department's undertakings.

S. 1579 would extend the Advisory Council's authority far beyond existing review and comment procedures on Federal undertakings. For example, the

the responsibility for standards to the Advisory Council does not address this discrepancy.

Section 106:

The discretionary authority of the Federal agencies to determine when to withhold cultural resource information should be retained. It should not be vested in the Advisory Council. We believe that the Federal agencies are in a better position to know the circumstances of a request for information and to respond in a timely manner. Given the number of routine requests for information from the Forest Service at various levels of the organization, it would be unreasonably burdensome to require consultation with the Advisory Council each time a request was received.

Section 111:

We oppose the provisions in section 111 that would authorize the Advisory Council on Historic Preservation to issue "notices of suspension" which would require agencies to suspend work on an undertaking until being notified by the Advisory Council that the suspension was lifted. This could greatly increase project delays and suspend permitted actions. We conduct thousands of undertakings each year, while only two or three receive an expression of concern from the Advisory Council. It seems unnecessary to create a potentially counter productive expansion of the power of the Advisory Council over the actions of Federal agencies.

Section 111 would also amend the National Historic Preservation Act regarding the National Register of Historic Places. The Advisory Council does not maintain the National Register of Historic Places, nor does it specify criteria for significance for inclusion in the Register. This section would

Advisory Council would become responsible for setting most of the standards for archaeological work on Federal lands. The Advisory Council would also receive new authority to enforce its views through "suspension notices", "remedial actions", and professional standards.

We object to the enactment of this bill, because we believe that it is inappropriate for a body made up of appointed members to prescribe standards for Federal professional archaeologists and archeological studies. We believe the current system is logical and workable. Congress authorized the Department of the Interior to provide standards for Federal programs in consultation with other Departments and agencies, while the Advisory Council reviews the application of those standards to Federal undertakings. Extending the Advisory Council's role, as S. 1579 would do, is likely to increase delays and conflicts in addressing historic preservation issues with little increase in actual preservation activities.

On the other hand, we support some of the provisions of S. 1579. I will highlight our major concerns in the order they occur in S. 1579.

Section 103:

Sections 103 and 118 would not resolve the problems that exist with current qualifications for Federal archeologists. The provisions referred to vary from the standards set by the Office of Personnel Management. Although we would support a modification of existing OPM standards to match those in the Archaeological Preservation Protection Act, we believe that this could best be done within existing authorities. Any discussion of modifying qualifications should include Federal Historic Preservation Officers and OPM. Transferring duplicate and confuse the process for determining significance. Decisions about importance and about threats to preservation should be made by those who have possession of the necessary information--States, local governments, and Federal agencies.

Section 114:

Section 114 would transfer permitting responsibilities now held by Federal agencies or by the Secretary of the Interior to the Advisory Council on Historic Preservation. Given the potential workload and existing staffing levels in the Advisory Council, this action would either require an increase in staffing for the Advisory Council or an indefinite delay in the issuance of permits until new guidelines were prepared. The Forest Service has not had problems issuing permits under existing statutes in recent years, and we see no benefit from such a change. We also find this section to be ambiguous with respect to the exemption of normal requirements for tribal chairmen.

Section 120:

Section 120 would provide direction in dealing with human remains and associated grave goods. This amendment matches very closely our procedures for the consideration of human remains found on National Forest System lands. Therefore, it is unnecessary.

Section 121:

We object to requiring the registration of artifacts such as proposed in section 121. This amendment would direct the Advisory Council to establish a program to be carried out in cooperation with and possibly delegated to Federal agencies. We do not currently have the resources to implement or manage such a program. With literally hundreds of thousands of sites and millions of artifacts recovered to date, the cost of implementing this provision alone could be in the tens of millions of dollars just for the Forest Service.

While we have lesser concerns regarding numerous other provisions of these bills, this concludes our specific comments on the proposed legislation. We are very concerned with the management of cultural resources. Any changes in legislation that would result in a modification of requirements placed upon Federal agencies would have a major impact on our cultural resource program and on other programs throughout the agency.

I would be pleased to answer any questions.

Senator **Bumpers**. Dr. Bush.

STATEMENT OF DR. ROBERT D. BUSH, EXECUTIVE DIRECTOR, ADVISORY COUNCIL ON HISTORIC PRESERVATION

Dr. **Bush**. Thank you, Mr. Chairman.

Again in the interest of time, I will not bother the Committee by going over the complete text of my prepared statement and would ask that it be entered into the record. I would like to, however, draw a couple of the key points from that presentation to the Committee's attention very briefly.

The first is that the Advisory Council has not taken any formal action with regard to Senate bills 1578 or 1579 other than that at our last meeting on the fifth of February the Chairman did appoint a task force of members to examine these bills and other preservation legislation currently pending in order to report back to the full Council at our June meeting with some recommendations from that task force.

The composition of that task force involves not only Federal agencies but preservation organizations and citizen members, so in a way it is a microcosm of the entire Council and I think therefore will have some meaningful comments back for this Committee and for the Congress.

I would point out also, Mr. Chairman, that my colleagues representing the Department of the Interior and Department of Agriculture are also members statutorily of the Advisory Council and you therefore are in fact getting some points of view that will be expressed during those discussions coming up by the task force and the full Council.

Because the Council has not formally taken action with regard to either of these bills yet, my testimony today before this Committee is going to be more personal observations in terms of comments that I have had with Council members and in terms of the informal discussions that we have had.

I want to point out that it is generally a consensus among these members that there are some very good, very desirable provisions that can improve the national historic preservation program either in the form of an amended 1579 or as part of some other bill. Quite possibly, the proposed National Heritage Conservation Act which has not been introduced yet might be one mechanism for bringing some of these concerns on a national level into law.

We do believe that certainly with regard to the role of the Advisory Council that there again are not only some specific provisions that we could accept as being supportive of our role—that is, in terms of the Advisory Council—but there are some that we feel are inappropriately in 1579 given to the Advisory Council and more properly ought to belong with the appropriate Federal agency, which in most instances would be the Department of the Interior.

Briefly, Mr. Chairman, I just wanted to go over about four of those sections that I feel would be useful in terms of my testimony before this Committee today. That is, section 101, which requires each Federal agency to establish a management program.

We have been working with Federal agencies for many years attempting to get those management programs in place and also attempting to strengthen the role of the Federal Preservation Officer within the respective agencies in order to coordinate and work with the development of their Federal preservation responsibilities.

The reaffirmation and strengthening of sections 110 and 106 of the National Historic Preservation Act is something that the Council will look at with great interest and be particularly focusing its attention on in the upcoming discussions of our task force.

This is really, in a way, due to not only the fact that we have recently undergone a study mandated by a House committee to examine our regulations but in the last couple of years particularly efforts that have been made by some agencies to secure a waiver from compliance with sections 106 and 110 of the National Historic Preservation Act, which is of very grave concern for the Council.

There are particular sections in the area of amending the Archeological Resources Protection Act that are consistent with prior actions taken by the Council, particularly when the Council met at Gallup, New Mexico, in 1988 and deals with again the very difficult problems of looting human remains, grave goods and so forth and which the Council was very concerned about and took policy decisions accordingly.

We also feel that the concept of the Federal-State-local cooperation is a must. This is not only in the law but also in our regulations and in guidance documents that we have prepared, and in the most recent case in working with the Department of the Interior and the National Park Service to provide guidance along these lines.

Certainly the issue of allowing and developing an opportunity for tribal historic preservation programs to be increased in terms of their effectiveness on their own lands, to have the tribal preservation programs adequately funded, has been given a good start by Congress in terms of the program currently with the National Park Service, and it is again a matter which the Council directly dealt with at its meeting in Gallup, New Mexico.

It was our pleasure to be able to tour the Navaho reservation as part of that meeting, and to meet with tribal preservation program people at Window Rock, as well as to listen to testimony from a number of tribal representatives who spoke on behalf of getting increased autonomy for their tribal preservation programs on their lands.

And finally, Mr. Chairman, the section 401 with regard to the revision of authorities for local historic preservation programs, we certainly support the concept of delegation of authority to include the State and the local communities in the whole issue of preservation planning and preservation operation as far as the role of the Federal government and other preservation undertakings are concerned.

So, with that, Mr. Chairman, I think this concludes my oral remarks and I would be happy to answer any questions that the Committee would care to address.

[The prepared statement of Dr. Bush follows:]

Advisory Council On Historic Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004

STATEMENT OF DR. ROBERT D. BUSH
EXECUTIVE DIRECTOR, ADVISORY COUNCIL ON HISTORIC PRESERVATION
BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS & FORESTS
COMMITTEE ON ENERGY AND NATURAL RESOURCES
U.S. SENATE

February 22, 1990

Mr. Chairman and Members of the Committee, I am Robert Bush, Executive Director of the Advisory Council on Historic Preservation. The Council is an independent Federal agency created by the National Historic Preservation Act of 1966, and is composed of 19 members, including heads of 6 Federal agencies, the Architect of the Capitol, representatives of State and local governments, the preservation community, and non-Federal members appointed by the President. We have two principal duties: to advise the President and Congress on matters concerning the national historic preservation program, and to oversee the process established under Section 106 of the National Historic Preservation Act to protect historic properties from needless harm by Federal activities. Over the course of performing our responsibilities to advise the President and Congress during almost a quarter century, we have appeared often to provide testimony on legislation. I am pleased to have the opportunity to do so again on behalf of the Council.

The Council has had a long-standing interest in legislative efforts to improve the national historic preservation program. At our meeting last June the Council voted to endorse the concept of a legislative initiative to upgrade the protections afforded by Federal law to historic properties. This action was taken with regard to a proposed National Heritage Conservation Act, which had been under discussion in the historic preservation community but has not yet been introduced. S.1579 under consideration by this committee today has been provided to the Council Members and was discussed at their meeting on February 5, 1990.

While no formal action on that bill or S.1578 was taken at that meeting, a task force of Council Members was appointed to examine it in detail and report back to the full body at our next meeting in June. In the absence of a formal Council position, I would like to share with the committee my own professional view about these proposals.

With regard to S.1578, I am opposed to the creation of an independent preservation agency composed of programs currently residing with the Secretary of Interior and the Advisory Council. Rather than creation of new separate agency, more attention should be given to strengthening the historic preservation programs carried out by the Secretary of Interior.

As I mentioned earlier in my testimony, the comprehensive provisions of S.1579 range from strengthening the management responsibilities of federally-owned historic properties to extensive amendments of archeological protection laws and extending the scope of the Abandoned Shipwreck Act. Each of these changes would in some way increase and strengthen the powers of Federal, State and local governments to protect historic properties and encourage historic preservation. However, they carry with them questions of organization, budget, administrative procedure and political feasibility that prevent me from recommending this bill in its present form at this time. S.1579 as drafted entrusts the Council with most of the new legal authorities it creates. I believe that many of these are inappropriately assigned to the Council, given its primary duties as a policy and oversight body rather than a line agency. I believe that any new program authorities created by S.1579 be assigned to the proper Federal agency for implementation, which in most instances would be the Department of Interior.

I do believe that there are some good and desirable provisions in the bill that could improve the national program. I believe that the enactment of these, either in an amended S.1579 or as part of another bill, such as the proposed National Heritage Conservation Act, would be part of a reasoned and responsible advancement for historic preservation on a national level. I do not wish to prejudge the findings of the task force which was just appointed in its evaluation of the 78-page bill, but I would offer that there are some elements which I believe are worthy of support based on my experience with the preservation program and which are consistent with previous actions taken by the Council. I and the Council will consider further provisions as this legislation moves forward in the legislative process.

As Executive Director of the Council, I am prepared to support the following authorities from S.1579 in concept, with the understanding that they will be subsequently refined in the legislative process and that the task force and the full Council will have the opportunity to review such language prior to our June meeting.

1. Section 101 (a) requires each Federal agency to establish a "management program" for historic properties it owns or controls. This affirms and strengthens the current provisions of Section 110 of the National Historic Preservation Act, placing agencies under a specific obligation to act.

2. Sections 113 through 122 propose a variety of amendments to the Archeological Resources Protection Act. These include: strengthening the penalties for looting on Federal lands, the creation of archeological research priorities to guide archaeology conducted with Federal funds and permits, and establishes a Federal policy for treatment of human remains and grave goods. At its meeting in Gallup, New Mexico. the Council adopted policies consistent with these general provisions in 1988.

3. Section 203 (a) revises the authorities for State Historic Preservation programs. The concept of Federal, state and local sharing of these responsibilities through delegation of functions is one that I endorse. However, I cannot recommend that such delegation can only occur when accompanied by "full compensation" to the State Historic Preservation Officer.

4. Section 301 authorized the establishment of tribal historic preservation programs, with the appointment of a tribal preservation officer and the authority to assume the duties of the State Historic Preservation Officer on Indian lands. I recommend the endorsement of this concept. Again, the Council at its Gallup meeting heard from a number of Indian tribes concerning the need for tribal participation and authority for preservation programs on their lands.

5. Section 401 revises the authorities for local historic preservation programs. I support the concept of delegation of authority from the state historic preservation offices to a local jurisdiction in the form of a certified local government, although this should be done by mutual agreement.

In conclusion, Mr. Chairman, I feel comfortable in speaking on these issues in my capacity as Executive Director of the Council, and on the basis of discussions I have had with individual Members. Acting through my office and the Council task force, we intend to examine all legislative initiatives on historic preservation carefully and fully. Thank you.

Senator **Bumpers**. Thank you, very much.

Senator Fowler, could you take this seat over here on the end? I would like, if I could, are you on a tight schedule?

Senator **Fowler**. Not too tight for this.

Senator **Bumpers**. I would like, if we could, just to have your testimony and ask a few general questions about the legislation.

STATEMENT OF HON. WYCHE FOWLER, JR., U.S. SENATOR FROM GEORGIA

Senator **Fowler**. Thank you, Mr. Chairman, gentlemen.

Mr. Chairman, first of all, I want to thank you for holding these hearings on my proposals for strengthening the Federal preservation programs.

There is no question in my mind or anybody else who should be in the Senate, that if it were not for your personal efforts and foresight, among other distinguished members of the committee, that we would not have maintained our present level of commitment to preserving the treasures and symbols of our country's history.

That has not been easy, as you know, and I thank you, we all do, for your unequivocal leadership.

Mr. Chairman, quite frankly, as we look at a little bit of recent history, throughout the 1980s we fought off administration attempts to weaken historic preservation programs and, as was always proposed, to zero out the Historic Preservation Fund.

Despite this tenuous Federal commitment, preservation forces won their biggest national victory in 1988 when Congress, led by you and this subcommittee, intervened to protect the Manassas Battlefield Park.

How did that happen? Why did this issue stir such extraordinary emotions? In my words, and I know I risk hyperbole here, but it was a question between, from a historic perspective, hallowed ground and greed. The violation of our heritage for shopping mall revenues was obvious, and it was extreme.

But I do not think that that is the whole story. I think this controversy struck a cord nationally between Americans everywhere because they recognized this conflict between preservation and so-called progress as one that has become more critical than ever before in their own communities.

We are quite simply facing the permanent loss of historical resources on an unprecedented scale throughout our country.

Efforts to prevent the destruction of our historical riches have always depended on the dedication and hard work of interested citizens, usually volunteers within local communities.

We have got to encourage local citizens to persist, but in this day that is simply not enough. We must also attempt to aid their efforts by crafting sound national policies for protecting our public lands and our cultural treasures.

It seems to me that we must recognize what the William Center controversy has already demonstrated—and what this administration has finally acknowledged for the first time since 1982 in President Bush's proposal, and that is that preservation is a national priority.

Very quickly, Mr. Chairman, as you know I have introduced two pieces of legislation 1578 and 1579, to try to accomplish this purpose by strengthening and streamlining our Federal preservation programs.

The first one—well, I do not think I need to describe it. I have two or three pages, basically describing it, but far more valuable are the thoughts of our experts and friends at this table and the panels to come after.

I will say that this has been a three-year effort to date. I have consulted with every group imaginable that had an interest. We have tried to work in being comprehensive in bringing all of these groups together who are really the front line of our private and public efforts in preserving our history.

I have had many very invaluable suggestions as we put the legislation together. I am under no illusions whatsoever about the difficulties that lie ahead in the congressional consideration of this proposal, but the fact remains that we must somehow address the lack of any central accountability in our Federal preservation efforts.

I will also acknowledge, with some trepidation that there are some contentious issues in both of these bills. I think that is to be expected, and frankly, I have put forth some of these proposals for discussion purposes primarily in order to open the area where there are problems and seek further suggestions which could be incorporated into any final legislation.

As I saw all of our distinguished members of the panel and we talked about state, local and Federal need for cooperation, they all nodded, I think in agreement. I think I was interpreting that.

Let me end my little part here, Mr. Chairman, by saying again, what you and this Committee know, that the 20th century battle of Manassas made it clear, unequivocally clear, that we cannot rely on a local framework of protective laws alone to protect our national treasures.

We have got to take the lead in Washington. We have got to have a comprehensive approach because local regulations and volunteerism, as important as they are, simply are inadequate.

If we do our job, at the very least we will preserve the resources of our country, to allow future generations to know that we did our part.

How do we pay our debt to the past? It seems to me it is in putting the future in debt to us. This is a chance to do it.

Thank you very much.

[The prepared statement of Senator Fowler follows:]

Preservation Hearing
Public Lands Subcommittee
Senator Wyche Fowler, Jr.
February 22, 1990

I want to thank my friend the Chairman, Senator Bumpers, for holding this hearing on my proposals for strengthening our federal preservation programs. It is largely through his efforts and foresight, along with other distinguished members of this committee, that we have maintained our present level of commitment to preserving the treasures and symbols of our history. That has not been easy.

Throughout the 1980s we fought off administration attempts to weaken historic preservation programs and to zero out the historic preservation fund. Despite this tenuous federal commitment, preservation forces won their biggest national victory in 1988, when Congress -- led by Senator Bumpers and this subcommittee -- intervened to protect the Manassas Battlefield Park.

How did that happen? Why did this issue stir such emotion? It happened largely because the trade-off between hallowed ground and greed, the violation of our heritage for shopping mall revenues was so obvious and extreme. But I do not think that is the whole story.

I think this controversy struck a chord nationally because Americans everywhere recognized this conflict between preservation and so-called progress as one that has become more critical than ever before in their own communities. We are quite simply facing the permanent loss of historical resources, on an unprecedented scale, throughout this country.

Efforts to prevent the destruction of our historical riches have always depended on the dedication and hard work of interested citizens, usually volunteers, within local communities. We must encourage local citizens to persist, but in this day that is not enough. We must also attempt to aid their efforts by crafting sound national policies for protecting our public lands and cultural treasures.

We must recognize what the William Center controversy has already demonstrated -- and what this administration has finally acknowledged, for the first time since 1982, in President Bush's budget proposal --that preservation is a national priority.

I have introduced two pieces of legislation, S. 1578 and S. 1579, to accomplish that purpose, by strengthening and streamlining federal preservation programs.

Let me start with the second of those two bills. The National Historic Preservation Policy Act, S. 1579, is aimed at reasserting federal leadership in cooperation with bolstered preservation efforts by the private sector and state and local governments. Also, for the first time, this partnership would be extended to include Indian tribes.

The bill would also reinforce federal protection for historic properties, which now in most cases has no teeth at all. It would also strengthen the federal archaeology program, especially in combatting the looting and illegal trade of archaeological resources. Finally, it would establish a comprehensive education and training program, designed to increase public awareness of preservation concerns.

I think it is safe to say all who take preservation to heart agree with the principles outlined in this legislation.

S. 1578, the Historic Preservation Administration Act, embodies more fundamental organizational reforms of our preservation effort. This bill would create a National Center for Preservation Technology -- in response to the Office of Technology Assessment's 1986 finding that there is "a conspicuous need for an institution to coordinate research, disseminate information, and provide training about new (preservation) technologies."

The bill also establishes an Archaeology Advisory Board and a Preservation Advisory Committee to bring the highest level of expertise possible to our federal preservation decisions. These entities would operate under the rubric of a new Historic Preservation Agency, created to oversee and coordinate a national preservation program. This agency would be constituted, not by expanding the federal bureaucracy, but by transfering existing functions and personnel from other agencies.

I am convinced that an historic preservation agency, where preservation is the only priority, offers the best long-term approach for achieving the level of federal leadership that is necessary in this field.

I am under no illusions about the difficulties that lie ahead in congressional consideration of this proposal. The fact remains: We must somehow address the lack of any central accountability in our federal preservation efforts.

There will be other contentious issues in these two bills. There are some provisions, which, frankly, I have put forth for discussion purposes only. I fully expect to see some modification of these bills as the process moves forward. I ask only that we keep clearly in sight our first responsibility: the public interest in protecting rapidly vanishing artifacts that don't belong to any one of us, that belong to the history and heritage of all Americans.

The 20th century battle of Mannassas made it clear that no local framework can be relied on, alone, to meet our national obligation. Historic preservation must become a higher priority in Washington, embodied in a coherent and comprehensive national policy, so that Americans will always understand from whence they came.

Senator **Bumpers**. Thank you very much, Senator Fowler.

I thank all of the witnesses here for your testimony. It is instructive and very helpful.

Jerry, let me just start off by making a comment. I do not know where I am going to come down on these two bills, but I do want to ask you this. I think this legislation is not necessarily the result of benign neglect, but almost over-neglect by the Reagan and Bush Administrations. I do not think they have any commitment or real concern about the archaeological and historical and cultural heritage of the country.

And what we have now is sort of an ad hoc situation where somebody came to me and said, Senator, did you know they are about to destroy the Manassas Battlefield? I said, really? Yes, as a matter of fact, they already have bulldozers on it.

What I am concerned about is we do not have a catalogue or a listing of what really is important and in this case I know we should have bought that land down in Manassas back in 1980. We did not feel we had the money to do it.

But there must be all kinds of places like that in the country, and I think first of all of the tall grass prairie out in Oklahoma, a real treasure. It has been my number one priority. I have not been able to get that thing set aside yet, but right now the Nature Conservancy and the Mormon Church have bought most of it, so I feel reasonably secure that nothing is going to happen to it until we can take some action there.

But my point is this: is the legislation not a result of the feeling of a lot of preservationists in this country that the existing system is not working well?

Mr. **Rogers**. Mr. Chairman, I believe that, as Senator Fowler said, this legislation has been something that has come about over a very long period of time. He himself has devoted three years to it.

I think this legislation does reflect reactions to past interpretations of policy. There were those who a few years ago would speak of a Federal, State and local partnership and would interpret into it that that meant the Federal Government would do only Federal things, the State governments would do things for the State governments and local governments would take care of locally significant resources.

That is not what this Administration means. So I do not believe that the frustration results from the present system not being workable, but perhaps from previous disputes over the nature of the Federal union and the distribution of Federal, State, and local responsibilities.

We fully agree with Senator Fowler. Local governments are not going to do their jobs alone, without State help, and State and local governments cannot do it without the Federal Government coordinating the entire program.

I have an article in the National Park Service newsletter, The Courier, that I very modestly supplied to your staff several days ago, that sets forth my view of how the Federal Government ought to be leading in these areas. And I might add that I have my director's concurrence with this.

Senator Bumpers. I have not seen that, Jerry, but I certainly will and I will have a look at that.

Mr. Rogers. Very good.

Senator Bumpers. Senator Fowler, if your bills had been in place last Congress, would we have had to go through the legislative process to protect Manassas, or could that have been handled through your legislation without the necessity of additional legislation?

Senator Fowler. I would certainly anticipate that there would have been no need for legislative action, for some of the reasons that you assumed in your question to Mr. Rogers.

That we would have had all of the historic preservation interests and community already in the Federal Government under one roof, giving the historic preservation the priority that is necessary to catalogue the kind of sites that are unquestionably to be protected.

Senator Bumpers. Now bear in mind, this was private property that we were taking there?

Senator Fowler. I understand that, but we have known where the Battle of Manassas was for several years. So the answer to your question is a very clear yes.

I think I ought to take, at the risk of being immodest, which always——

Senator Bumpers. You are the first politician to ever do that.

Senator Fowler. A question always accustomed to risking. But my legislation is not a reaction to any specific event, though I concentrated my remarks on the Manassas Battlefield.

I have been interested in historic preservation for many years going back to my days in Atlanta and the fact that we simply had no coordination of policy.

We had nobody again with central accountability, and I began this effort in the House of Representatives several years ago. Nobody came to me and asked me to write a piece of legislation or put anything in our hands.

This is a joint effort, as I say, of public and private, but it is one that is no reactive. It is something in my opinion that if historic preservation is going to work, in the simplest possible terms you have to have central accountability.

You will never have central accountability by having all these little offices spread out and, with all respect to Mr. Rogers and his good work, relying on them to coordinate. They do not coordinate on energy programs in the Federal Government, it does not make any difference who is the president.

They do not coordinate equal employment activities. We have seen how many hundreds, literally of different little offices we have in the government in our fight against drugs, and Mr. Bennett—he cannot make a war on drugs because he cannot coordinate what we already have.

That is why we need this legislation: central accountability, and not creating any new bureaucracy. We just pull everybody together that already is there and put somebody at the head of it that knows what he is doing and give them the authority under the law to exercise that.

Senator Bumpers. Senator Fowler, in your statement you say the bill also establishes an archaeological advisory board and a preservation advisory committee. Do you envision the preservation advisory committee being the same as the Administration, Dr. Bush's organization?

Senator Fowler: Well, I think I have no quarrel whatsoever with Dr. Bush's organization, but I just think that we can always review and expand to get the most expert private advice as well as the public advice and take advantage of the expertise of our country.

It seems to me, that that ought to always be re-looked at, whether or not my legislation became law or not.

Senator Bumpers. Mr. Rogers, S. 1579 directs the Advisory Council to prepare a list of historic and archaeological resources of critical importance and gives the council the authority to protect such resources, including the ability to bring civil action if necessary. These critically important resources may be on private or public land. Now does any land-managing agency have this generic authority to bring civil action on private lands outside conservation area boundaries that this bill would grant?

Mr. Rogers. Mr. Chairman, we know of no agency that has authority to bring that type of action on behalf of resources on private lands, with one very small exception—the National Park Service has authority in a measure enacted in 1982 to take this sort of action, civil action, to protect the dunes at Cape Cod.

But beyond that, we are not aware of any.

Senator Fowler. Mr. Chairman, if I might once again, use my time here that you have given me. Remember two years ago when I was on the committee with you, we found that the Park Service could protect archaeological sites and other things on their land but if somebody came and stole the stones off of the site and ran off the Park Service property they could not chase them.

The same thing with growing marijuana and drugs. I mean, obviously, if you are going to protect burial sites, if you are going to keep that same kind of thing from happening, when we discover sites that we want to protect, there has to be some better authority than they presently have.

I have no dispute with how they are handling what they have got, but they do not have enough.

Senator Bumpers. Do you think these bills elevate historic resources above consideration of other resources? Can any of you answer that question?

May I should ask, do you think it unfairly elevates historic resources above consideration of other resources?

Mr. Rogers. Mr. Chairman, I do have an opinion on that which I have stated in speeches many, many times. I would not say it unfairly elevates it, but there is no question that it does elevate it.

I happen to be very, very concerned, not only about the historic resources of the country, but about nature and habitat and scenery and recreational opportunities. And I believe that we need a strong agency that can deal with all of those and I hope that the committee would bear that in mind if it enacts protective measures, to be aware there are other kinds of resources in need.

Senator Bumpers. Senator Burns?

Senator Burns. Thank you, Mr. Chairman.

I guess I have a couple of questions because I am not really that familiar with the attempts, but usually, and correct me if I am wrong, Senator Fowler, that as a rule, in order to establish or to preserve a historical site or whatever, in the past that has usually been stimulated or brought to the attention of either the county government or state or Federal Government by private concerns. Is that correct?

I mean, there were people who were concerned about—let us take in the case of the Manassas Battlefield. Was that case taken to the State of Virginia before it was brought to the attention of Congress? Please clear me up on that, because I was not here when that debate went on.

Was that taken up with the State of Virginia before it was brought to the Federal Government?

Senator FOWLER. I do not know the answer to that.

Mr. ROGERS. As far as I know, Senator Burns, it was not. Although, that issue began as a disagreement on the local scale when a county government made a sudden and unanticipated change in a land use plan for areas next to the national park and basically in contravention to agreements that had been made with the national park manager there.

Senator BURNS. I guess I have some problems———

Senator FOWLER. First, the premise of your question—most of these sites, of course, except for new discoveries of burial grounds an Indian mounds and shipwrecks, most of our sites are historical, which means they have been around a long time, and we know where they are and how they got under either private protection or private jurisdiction—it may go back 100 or 200 years.

Senator BURNS. I am wondering would you say that if this was the law of the land right now, would a bureaucracy that is created by this Congress have the right to go out there and just take over a site even though it is on private property, and call it a historical site and condemn it?

Senator FOWLER. No.

Senator BURNS. And even pay the owner for it? It would have that right?

Senator FOWLER. No.

Senator BURNS. They would not have the right of eminent domain?

Senator FOWLER. No.

Senator DOMENICI. Would the senator yield?

Senator BURNS. Yes.

Senator DOMENICI. Well, I was not here, but I understood the Chairman asked if this proposed independent agency would have been able to change the course of history regarding that Manassas field, and I understood the answer was yes.

Senator FOWLER. Well, I am trying to answer precisely. I think the Chairman's question was, Mr. Domenici, that would—if my bill had been in place, had been the law, would it have been necessary for the Congress to act in order to protect the Manassas Battlefield, and my answer to the Chairman was that I would assume that if the bill had been in place, with our preservation committees, our public/private consultation, that some way it would have been found predating the controversy at Manassas, to recognize that as a national treasure.

Senator Domenici. Well, the only reason I ask the question is because I certainly was hopeful that nobody expects this independent historic preservation agency, if it ever comes into being, to condemn private property without Congress appropriating the money.

I would assume that we still would have to provide the money, and I would assume there would have to be a constitutional mechanism for determining that there was a national interest under some kind of guidelines, and I had thought maybe the answer was to the contrary, and I thank the Senator for yielding.

Senator Burns. My concerns were along the same lines.

Have you given any thought on what this would cost the Federal Government to set up this commission and this office?

Senator Fowler. I know that is a question we certainly have anticipated. Again, my answer, because I do not want to mislead anybody, is first of all, we believe that we are not setting up a new bureaucracy, that we are simply bringing together all under one roof, under an agency, existing entities of the Federal Government, Mr. Burns.

Senator Burns. I guess I just have a real concern that we are creating, I think before it is all over, another bureaucracy that would have broad powers, that sometimes those little bureaucracies establish their own little kingdoms and fiefdoms and then we have got one big problem of infringement on personal property rights.

And I would hope that that would be addressed in this legislation. Even though you might not have the right of eminent domain, there is a judicial route, and I would say sometimes the Park Service is even guilty of some of that. That does not make you too happy.

But private ownership of land, which is one of the cornerstones of this Constitution, it seems is being threatened every day. I would just hope that this legislation—there is no doubt that we have certain areas and certain things in this country that should be preserved, and I would hope that this addresses those problems as they might arise.

So I am just very concerned, are we creating another headless, no-accountability type of bureaucracy that just goes out here and picks on private Americans for no reason at all. And I am just concerned about that.

Senator Fowler. Nobody, I say with due respect to my friend, nobody with any sanity would propose that. What we have now I think could arguably be what you described, a headless operation, though well meaning, but one that is impotent.

Impotent to do what? To preserve those things that a consensus of Americans would unquestionably want to preserve for history.

Let me add something. I do not want to mislead you or Mr. Domenici on the question of eminent domain. We have been working that section over with lawyers for two or three years, and so when you asked me about eminent domain—could they go out on anybody's private property? The answer is still an unequivocal no.

I appreciate Pete's elaboration, but we would create, and this may be of some concern to you, we would create under the advisory council, give them the authority to file an injunction, authorizes the advisory council to seek an injunction in a United States District Court to stop an action, I quote, "an action that is being taken or that is about to be taken, that may threaten a critical historical property."

That right, that injunction would extend to a filing of an injunction on private property.

Senator **Burns**. Would you agree with this, after reading that part of it, this is a step for the Federal Government to get into land use planning?

Senator **Fowler**. Again, Mr. Burns, I think the only helpful way, I say with great respect to you, is not to describe this in philosophical terms or zoning terms or planning terms.

It is the question of what do you do, as we have seen in Tennessee and Kentucky recently and on Indian lands, when all of a sudden, a site, an important burial site or near Indian mounds, let me use those examples, turn up on someone's private property and the archaeologists are invited on to that private property. They conclude this is an extraordinary find, pre-dates anything else known. And yet the private property owner wants to sell that for a shopping center.

Now what happens there, I would submit is simply a critical determination of national values. Certainly that is his property and he ought to be paid something for it, and we are going to have to make that decision ultimately as to whether or not we want to purchase that property.

But the question right now is we have no way to going in and stopping the destruction of what all knowledgeable preservationists, scientists, archaeologists would conclude is something that we ought to preserve that is extraordinarily important for our history.

Right now we are losing those right and left to grave robbers as well as people who would sell it off, mainly because of ignorance and the quick buck, and not give the people of the United States, speaking through their Congress, through an appropriate agency that has that determination, the opportunity to make the case why this ought to be brought into Federal protection.

If anybody can suggest to me another way to do it, short of injunctive relief or something, so that the parties can be heard, then I do not want to use any more police powers than are necessary either.

But right now, nobody has been able to come up with a way to do that.

Senator **Burns**. Again, I would just say, we are out here and we are people of the land. You run across a bone and the best lawyers in the world can make a case about why that farmer should not plant corn there next year. We have seen it happen in Montana. We have seen it happen in other parts of the country on frivolous things.

I think we are opening the door to more frivolous things and I would hope that you would deal with that in this legislation.

Basically, I support the legislation. I think there are some areas where we do need some guidelines on historical preservation, but I am also very concerned with property rights, and that is the cornerstone of a free country.

Senator **Fowler**. I appreciate your suggestions and would welcome, as we go along, any specific suggestions. It is not written in stone, so to speak.

Senator **Burns**. Thank you, Mr. Chairman.

Senator **Bumpers**. Senator Domenici?

Senator **Domenici**. Mr. Chairman, I regret I cannot stay beyond a few observations. I am in another meeting at the same time as this one, but I had to come up for a minute, because I want to say my very good friend, the Senator from Georgia, I am not even close to being able to say that I support this legislation. So I do not want to mislead you.

As a matter of fact, I do not think we need more independent agencies. What I really think we need to do is to take the laws that are on our books right now and the authority that is on the books and if you want more preservation, if you want more assurance that the artifacts are not going to get stolen, you ought to fund the programs.

That is what we really need. We really do not need an independent agency. Now frankly, I do not come here on this issue as one who is not involved. On archaeological resources, by accident, I do not take a back seat to anyone in the Congress. I have a lot of it in my state. But somebody came to me with a really tough proposition about looting, and so the Archaeological Resources Protection Act of 1979, I was privileged to author and it got through.

It did not quite work, so in 1985 we amended it and made some new definitions and we have a pretty strong law. Let me tell you, however, the archaeologists came to us and said, with all of that, it is good law, but it is not working.

What we found out was there was not enough money going to the United States Department of Justice to enforce it. So we have U.S. attorneys who have a nice law and a lot of looters, but they do not have enough money to enforce it.

And frankly, we are getting some convictions, and I can tell my friend, the Chairman, why. Because we increased the funding, and made it very specific so they have to use it, and they are now getting convictions.

I do not remember the dollar number, but it might be as much as $1.25 million for just criminal prosecutions.

We already have, I would suggest to my friend from Georgia, on the archaeological lootings and definitions, we have a very good law, and I hope you will look at it carefully. I am sure we will before we change it.

I do not know that to create a new independent agency is going to solve the problems. The problems are—there is no way in the United States to acquire property upon which there are things of historic value without buying it. I mean, you may get a temporary injunction, but an injunction will soon turn into a taking and you will have to have money, and we are not going to get money by creating an independent agency.

Senator **Bumpers**. If the Senator will yield? You also often have to put up a bond in order to get a temporary injunction.

Senator **Domenici**. You might indeed, and I think that is part of our heritage. I mean, we have very, very different opinions among experts on what is historic or not, and we have to decide that first. But to take somebody's property because one group says it is and another group says it is not—you know, maybe I would come down on the side of going for the finding of historic significance, but if you own the property you might not.

And so I just think we have to be very careful about all these sections in here that seem to be utopian, that by creating an agency we fix all of these things.

So I came here today—I mean, I certainly do not take a back seat to anyone on historic preservation, but I do not believe that we should assume that to create a new entity and think we are, giving them some new powers, we can change the Constitution or we can change the notion that somebody has to enforce this and somebody has to come up with resources.

I am not even sure that we want national standards for archaeologists. I would be interested in hearing what they say about it. I have worked with a lot of them. I am not sure that we need that.

Let me tell you, we do have, for those who are worried about acquiring more, if there is one thing we have an abundance of is archaeologically significant things sitting around that are not even put into a position of preservation yet.

We have them in the back rooms of museums by the thousands. They have been found and taken and they have significance. We could use some real money to help each state university and museums that are doing this so we can preserve them.

There is a real need for that. I do not know that we need a new Federal instrumentality. But if we need one, we probably need one in that area, to get what we have already found that is sitting around languishing. And there are millions of them that have not yet been indexed, they have not been preserved—I would be interested in whether we can find a way to do that.

Senator **Fowler**. Mr. Domenici, let me just respond in 30 minutes. Again, I know it is your concern, but we did—we have worked very, very hard to meet this argument, that there will not be any net gain in bureaucracy. This is the pulling together of existing Federal agencies with no additions. I can say that firmly at present in this legislation.

Now, the National Center for Preservation Technology, that is named in this bill is a direct response to something you just said, the Office of Technology Assessment in 1986, and I quote, "There is a conspicuous need for an institution to coordinate research, disseminate information and provide training about new preservation technologies."

But this is done with no new money in my recommendation.

Senator **Domenici**. I would think we ought to explore that one. I would agree with you, we ought to explore that one. I do not know whether we need the whole agency to do that, but that one needs exploring for sure.

Let me correct something in the record, for those who would be—those who know the problems with reference to looting and preservation, they would say Senator Domenici was wrong when he talked about the Justice Department and prosecution.

Actually, the problem is that the Forest Service, the BLM and the Park Service, they have a multiplicity of functions, and one problem is that that part of their function that has to do with this has to work along side of the Justice Department and others; and I want to say that we have increased the funding for BLM, Forest

Service and Park Service for this, along with a $1 million increase for the prosecution side, and we are getting some results.

But that is where we need the action. We need the Bureau of Land Management, the Park Service and the Forest Service putting this higher on their priority list and then prosecute the looters and we very well may need a technology transfer and preservation center of the type you have spoken of.

I thank you very much, Mr. Chairman.

Senator **Bumpers**. Thank you, Senator Domenici.

Senator Fowler, it seems obvious here that one of the concerns everybody has is the authority of the advisory council and parliamentary paragraph 6(A) on page 25 of the bill.

The advisory council is authorized to bring a civil action to cease an action that is being taken or is about to be taken, that may threaten a critical historic property. The civil action authorized by subparagraph (A) may be brought in the United States District Court—for the purpose of this section, and then it defines what is meant by a threat.

Now this goes back to two or three questions. Number one, I take it, Dr. Bush, that the advisory council does not have the authority to do that now, do you?

Mr. **Bush**. What we have, Mr. Chairman, is we do not have the authority to bring injunctive relief, no, we do not. Our legal department works mostly with the Department of Justice, and with the Office of Management and Budget, but we coordinate our activities with the Department of Justice for purposes of any kind of legal action.

Senator **Bumpers**. Senator Fowler, on what I was visiting with Senator Domenici about, let us assume that we have a property, historic, archaeological or whatever, about to be disturbed on private lands, and let us assume that the advisory council thinks that whatever is about to be done is a threat under this section, and they have the authority to bring this action for an injunction.

Assume further that somebody is getting ready to make a big investment, and you stop it with an injunction.

I know you were a trial lawyer, and I know you know the laws of Georgia. In Arkansas, in order to get an injunction like that, you almost invariably would have to put up a bond.

Now, would you envision appropriating money on the front end to the advisory council so that they would be in a position to take immediate action on those things?

Or would you suggest that they just bring the action and come to Congress for whatever money is going to be necessary to stop something?

You know, our appropriation process is very laborious here.

Senator **Fowler**. I appreciate your kind words about my excellent legal career, which was short, for the right reasons.

I do not have my lawyers with me. We have been hashing over this. This is an area where I would seek not only the Committee's direction, but also the agency's direction, Dr. Bush and others.

I would like to submit an answer for you of what our best thinking is for the record, just so we do not get off into legal terminology that I am not able to support by the facts.

Senator BUMPERS. It seems to me, Senator Fowler, that we have two things to consider and probably a lot more. I must confess, I have not really studied this legislation. I just have a sort of superficial knowledge of it.

Number one, is it advisable to centralize the authority on this as you are proposing to do? And number two, how are we going to deal with all of these lists of areas and sites worthy of preservation that are on private lands?

I can tell you, particularly among my colleagues in this side of the table—that is a mine field as far as they are concerned. It causes all of us some concern, but you know, Senator Domenici has already expressed himself as has Senator Burns. And so we are going to have to resolve that.

And in that connection, I wanted to ask you, Jerry, do you keep a national list of architectural sites?

Mr. ROGERS. Mr. Chairman, we keep a National Register of Historic Places, which includes historic sites, architectural resources, archaeological sites, historic landscapes, engineering structures and other types of historic——

Senator BUMPERS. Okay, I own an old hotel in Little Rock, we will say——

Senator FOWLER. Those are on public lands?

Mr. ROGERS. They are on public and private lands.

Senator BUMPERS. This is private, and we have over 100 homes in Eureka Springs, Arkansas on the National Register, so I just used that as an illustration. I live in Eureka Springs and I have a 100-year old home that has some unique architectural qualities to it and so on.

So I apply to have that put on the Register. I do not just send you some description of it and you put it on there, there is more to it than that, is there not?

Mr. ROGERS. Yes, sir, there is. There is a——

Senator BUMPERS. But my question is this, Jerry, in order to get my home on the National Historic list, what do I have to agree to do? Am I limited in any way in the disposition of that property thereafter?

Mr. ROGERS. You are not limited in any way. To get your home on the National Register, you have to work with the State Historic Preservation Officer and get it nominated, but it remains your private property and you remain able to deal with it as you always have been.

There are restrictions placed upon the Federal Government as to what the Federal Government can do that might impact that property, in which case the Federal agency causing the impact has to consult with the State historic preservation officer and has to consult with Dr. Bush's council and secure their comment on the project. It is a remarkably effective protective device most of the time.

Senator BUMPERS. Number one, let us assume I sell my house to Senator Fowler and, being totally, what shall I say, uncaring about the architectural value of that house, he decides to put a brick siding on it and some little leaf work around the eaves and so on and is just going to bollix it up good.

How are you going to know that that ought to be taken off the Register because he screwed it up?

Mr. ROGERS. Of course I am certain Senator Fowler would be the last one to do that. We rely upon our very good network of 538 certified local governments that work through 59 State historic preservation officers to keep tabs on what is happening to the properties in the National Register, and one of their routine duties is to notify us in cases where properties have ceased to meet the criteria for the Register.

Senator BUMPERS. That is not many local governments in 50 States, is it?

Mr. ROGERS. It is a rapidly growing number.

Senator BUMPERS. Well, let me ask you an additional question. You do not send out on any kind of a regular questionnaire to people. How many homes are there on the Register, incidentally?

Mr. ROGERS. I cannot tell you how many homes are on the Register. There are 55,000 entries in the National Register of all kinds, public and private. We know, now that we have all of that in computer, that that includes about 750,000 parcels of property nationwide.

Senator BUMPERS. So you do not ever send out to those 55,000 people a questionnaire saying have you made any material alterations on this property since it went on the Register?

Mr. ROGERS. Senator, this is where we see the strength of our partnership coming in. To deal with something of that magnitude would be far beyond our capability and we rely upon our partners to do that—when they are able to drum up the capability. As has been said earlier, having the amount of money necessary to carry out our present statutory authority can sometimes limit their ability as well as ours.

Senator BUMPERS. Well, with that, let me close by apologizing to President Bush because I threw him in with President Reagan. Actually, he has asked for $34 million historic for preservation and he is to be lauded for that. That is the first request for preservation money in nine years. So, President Bush, I apologize.

Senator FOWLER. Mr. Chairman, may I just have one minute to reflect on your concerns?

Senator BUMPERS. Yes.

Senator FOWLER. I was trying to be overly careful with my friends in order for us not to get into an ideological debate on private property, and I tried to expand and come back and tell them exactly what we had in the bills now.

But I have been around the Congress now for 14 years. I know the fights over the Department of Consumer Affairs. I was involved in that. And the fight over the Department of Education, I was involved in that, as were you. We are not expanding the bureaucracy. We are deliberately pulling together existing entities, to put them under the same roof so they will talk to each other.

We are unabashedly saying that we are not going to protect those things, those resources, that do not belong to anyone—they belong to the people of the United States of America—unless you have some Federal leadership. We have seen at the same time of the Federal cutbacks, people represented in this room and all over the country, the private sector, has done a wonderful job. They have increased their efforts.

But it is just not enough. Some States and local communities have increased their efforts, but they cannot do it alone. And we are creating a partnership. We are reaching out to private, State and local, and also including for the first time extending that partnership to the Indian tribes and Indian lands, which is not the case in any Federal agency, I say, today. These are the first Americans and much of what must be done and must be protected has got to include the Indian tribes.

But I have tried very hard. I know the mine field. You used the right words. Any time you talk about private property rights, you know, you get a reaction, and it is a strong one, from all of us. But we have got to find a way at the national level to say once it is gone, it is gone.

You know, I have been fighting on trees. You know, you cannot grow back 500-year-old trees, but you can grow back some forests. But once you take away a historical site, we all know unless there is this huge consensus, nobody is going to pay any attention to it. It is not the fact that just one scientist picks up a bone or somebody else.

It is simply the question that I hope this Committee will decide. Are the treasures of our country important enough to ensure that we do the best job at the Federal level to ensure we identify them and protect them. That will require some teeth in our historic preservation laws, including injunctive relief, possible bonding, all those things which we do not have now. And the Federal Government is the only one. They are trying to do it now. All these gentlemen are trying to do it, and I commend them for their public service. But they do not have any teeth.

Senator BUMPERS. Jerry has a nice smile there. Senator Fowler, you are certainly to be commended for the tremendous amount of time and effort you have put into what I consider to be an extremely worthy cause. You know, I belong to the Save Everything Committee. I have not always been that way; I have to give Betty Bumpers credit for that. She can hardly throw a magazine away. As a matter of fact, she does not throw many away. You cannot get in and out of my house for them.

But, as I say, we are all indebted to you for your interest and the tremendous amount of work you have put into crafting this legislation, Senator Fowler.

Senator FOWLER. Well, I just want to work with you. This has been a group effort, as I say, for three years in the Senate, and if time would permit I will put in the record all the groups who have worked with me, have endorsed this legislation. We are about as close to unanimity, I think I can say, as anybody could.

I cannot get over—and I am not pointing this at anybody—I cannot get over or get around turf protection or this or that group that likes the fact that they are sitting down at one end of Pennsylvania Avenue and does not want to be a part of a united effort that had the kind of authority that we all agree, all of us who have worked on it, is necessary if we are going to protect what we need to protect.

As you and I know, we are not going to overextend because there is not going to be the money for it and we are not going to get agreement on many things, but at least we can protect what we have already got, and we are not doing that right now. Acid rain is eating it up; people are looting it, stealing it. And it is time we acted.

Thank you so much.

Senator **Bumpers**. Thank you. Gentlemen, I thank all of you for being with us.

We have two panels. The first panel this afternoon is F. Lawrence Oakes, President of the National Conference of State Historic Preservation Officers; William Lovis, Chairman, Governmental Affairs Committee, Society of American Archaeology; Karen Funk, Legislative Analyst, National Indian Education Association; Russell Keune, Chairman, Historic Resources Committee, The American Institute of Architects.

Mr. Oakes, you are first on my list, so why don't you proceed?

STATEMENT OF F. LAWRENCE OAKES, PRESIDENT, NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

Mr. **Oakes**. Thank you, Mr. Bumpers.

Senator **Bumpers**. Please remember our five-minute rule. We make an exception for Senators and distinguished bureaucrats, but ordinary peasants we cannot do that for. [Laughter.]

Mr. **Oakes**. First we would like to thank you for calling these hearings on two significant bills and particularly thank Senator Fowler for not only the introduction of the bills but his close communication with the preservation community to assess the needs of that community so that we can all grow and preserve our heritage.

Because the time is so short, let me make just a few points. I think Senator Fowler was right on target when he was talking about Manassas and the lessons that we have learned from that. We have learned that while most preservation takes place at the local level in Little Rock or Eureka Springs or Hot Springs, that simply that isolated individual effort is not going to be successful in maintaining a national program.

So we must have historic preservation as a national priority and whoever heads the efforts needs to have that as the priority and not just a priority. I think that is very important.

Let me take just a second to look at 1579. There are several items within that bill. Generally we support the bill very strongly and unequivocally. We think it does a lot of positive things in the area of creating separate titles for each of these partners in this partnership and defining the role of each, not only identifying those but adding new partners like Native Americans or Indian tribes.

As far as the SHPOs go, it helps to identify and to codify a number of activities that we have been undertaking for years but have not actually been in the law, but set those out clearly. So we think the bill does a good job of that.

The area that we have talked about, or the first panel talked about, most was the area of protection. We think this bill offers significant means for affording greater protection to historic resources. We agree that it is going to be a difficult area because you have to deal with philosophical issues that are close to all of us, but we need to look at and address the need for protecting the very small, most important core of historic resources in this nation.

So 1579 goes a long way in helping to pull together the ideas of 17 different laws that have been developed over the last 50 or 60 years in historic preservation and we support it.

S.1578 has had a lot of discussion in the last few minutes, and I would like to say that from the State perspective and representing the 50 States and nine territories that we do support the creation of this new entity. We have gone to extensive efforts to make sure that it is not creating a new bureaucracy. None of us want that. But we want the synergistic efforts to be made available to this community from the efforts of eight or ten different organizations who are sometimes working at odds under the present organization.

So we think that Senator Fowler's bill does a good job of pulling those existing agencies together so that they can get primary leadership that has a priority for national historic preservation in this country instead of having that as one of several.

As far as the National Park Service, I think I certainly would not diminish the job the Park Service has done in managing the parks of this nation. They have done an extensively good job. We have had good leadership from the Associate Director. But for the first 15 to 20 years of the historic preservation movement a lot of preservation was centered around acquiring, owning and managing property.

Historic preservation is so pervasive and so wide in its concept today that we are not a movement of acquiring. We are a movement where we try to plan for and protect the actions of government and largely help private citizens in caring about and bringing about historic preservation in this nation.

So it is our feeling even if you develop an independent agency with no more FTEs than exist in these agencies today that we will be far better off as a nation in getting preservation accomplished, because we will have one goal that we are looking for, and that is total preservation of those resources in the nation. We will not have to worry about the huge task of managing 400 parks at the same time.

Even without additional authority of these protective mechanisms that you were talking about in relationship to this part of the bill also, an agency could accomplish a great deal more in the way of historic preservation with the given resources if it were to bring its talents and its organization together so that it could do that and benefit from the synergistic effort that is produced by all of those folks.

So I applaud you for having the hearings. I hope we can all look forward to action being reported out of the Committee so that we can move toward incorporating some if not all of these ideas. We look forward to continuing our work with you to preserve our rich heritage in this Nation.

Thank you.

[The prepared statement of Mr. Oakes follows:]

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TESTIMONY

of the

National Conference of State Historic Preservation Officers

on

the **HISTORIC PRESERVATION ADMINISTRATION ACT**

S. 1578

February 22, 1990,

Subcommittee on Public Lands, National Parks and Forests

The National Conference of State Historic Preservation Officers appreciates the opportunity provided by Senator Bumpers and the Subcommittee on Public Lands, National Parks and Forests to testify on the Historic Preservation Administration Act.

The National Conference also wishes to express its appreciation to Senator Wyche Fowler for introducing the Historic Preservation Administration Act and for opening discussions on the nature of the federal leadership of the national historic preservation program.

NCSHPO ENDORSES BILL

The National Conference of State Historic Preservation Officers appears before the Subcommittee to endorse S. 1578. The National Conference of State Historic Preservation Officers believes S. 1578, by combining existing federal preservation functions into one agency, sets forth the ideal model for the administration of the national preservation program.

NO NET AGENCY GAIN

S. 1578 will not result in a net gain in federal agencies. The Historic Preservation Administration Act abolishes an existing historic preservation agency, the Advisory Council on Historic Preservation, and replaces it with the Preservation Agency. The Preservation Agency encompasses all the functions presently performed by the Advisory Council as well as the preservation functions, as defined by the National Historic

Preservation Act, that are now assigned to the Secretary of the Interior.

BACKGROUND ON NCSHPO

The National Conference of State Historic Preservation Officers is particularly qualified on this subject. The State Historic Preservation Officers have been conducting the national historic preservation program on behalf of the Secretary of the Interior since 1969. During this period, the Secretary of the Interior assigned the national historic preservation program to the National Park Service except for the years 1977-1981 when it was a part the Heritage Conservation and Recreation Service.

The National Conference of State Historic Preservation Officers is the professional, 501(c)(3) association, recognized in law,[1] of the gubernatorially appointed State officials who carry out the preservation program as defined in the National Historic Preservation Act for the Secretary of the Interior.

After two decades, the State Historic Preservation Officers still believe independence is preferable.

PAST INTEREST IN INDEPENDENT AGENCY

The interest of the State Historic Preservation Officers in improving the quality of federal leadership in the national historic preservation program is not new. The debate on the independent agency question has been with the program from its inception. In fact, it is a concept that surfaced in August 1969 in the second set of minutes of the predecessor to the National Conference of State Historic Preservation Officers.[2]

The need for a federal agency to coordinate the preservation program was argued in a 1976 report for Senator Henry M. Jackson, Chairman, Senate Committee on Interior and Insular Affairs. The purpose of quoting from the report here is solely to convey an on-going concern for and interest in the leadership role of the federal government in historic preservation.

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[1] The National Conference is recognized as the association of the State Historic Preservation Officers in the National Historic Preservation Act (16 USC 470i).

[2] National Conference of State Historic Preservation Officers, Minutes, St. Paul, Minnesota, Meeting, August 21, 1969, page 7.

> While there is no agency or department within the Federal Government mandated to deal exclusively with historic preservation matters, the Department of the Interior is recognized as the lead Federal agency for preservation matters. This responsibility includes management of federally owned historic properties and administration of Federal activities undertaken in partnership with State and local authorities. These responsibilities are thoroughly intertwined with the Department's other responsibilities for land and natural resource management and often involve competing interests. For example, the need to inventory historic properties must be balanced against the need to expedite the development of new energy resources on Federal and non-Federal lands. Because of such conflicting responsibilities and the lack of coordinating authority respecting other agency's programs and policies, coordination of preservation interests with other Federal activities is not as effective as is necessary. The absence of an agency authorized to coordinate competing Federal program and capable of effectively resolving conflicts seriously impedes the national historic preservation program.[3]

On April 17, 1980, this very Subcommittee under Chairman Dale Bumpers held a hearing on the National Heritage Policy Act. The publication of that hearing contains the testimony of 3 State Historic Preservation Officers as well as the testimony of the President of the National Conference of State Historic Preservation Officers, Larry Tise, SHPO of North Carolina. Appended to Mr. Tise's testimony is a National Conference of State Historic Preservation Officers' draft historic preservation bill amending a bill introduced by Representative John Seiberling calling for the establishment of an independent historic preservation agency. Similar to S. 1578, the National Conference bill called for the creation of a Historic Preservation Agency headed by an Administrator appointed by the President, with the advice and consent of the Senate, who received advice from a multi-member council.[4]

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[3] Advisory Council on Historic Preservation, The National Historic Preservation Program Today Prepared by the Advisory Council on Historic Preservation at the Request of Henry M. Jackson, Chairman, Committee on Interior and Insular Affairs United States Senate, Washington, D.C.: Government Printing Office, 1976.

In 1985 the National Conference of State Historic Preservation Officers, anticipating the 20th anniversary of the passage of the National Historic Preservation Act, initiated a thorough review of the Act. Prominent throughout all the discussions on a proposed bill was the concept of the structure of the federal preservation partner. In fact, no subject received more scrutiny, research or debate. At the March 1987 Annual Meeting the membership of the National Conference voted to support a draft National Historic Preservation Act amendments bill which included the provision for an independent preservation agency.

REASONS FOR SUPPORT

The National Conference of State Historic Preservation Officers supports the creation of an independent agency because historic preservation needs a clear voice in the federal government. The need, identified in the 1976 Advisory Council report, remains unfilled.

The interest in an independent preservation agency should not be viewed as a criticism of the National Park Service. The mission of the National Park Service is, as it should be, the National Parks. Taking care of the national park system is more than a full time job; it requires a total commitment. It would be unfair to expect the National Park Service to make the national preservation program a top priority.

The parks constitute the three per cent of our nation's land area that Congress has set aside as monuments to our natural and historic heritage, a colossal out-door Smithsonian. The mission of caring for that 3% is all consuming and rightly takes precedence in the Park Service.

The mission of the national historic preservation program is to care for the conservation and use of historic properties on 100% of the nation's land area. That responsibility comes not as an owner or curator but as a watch-dog, an advocate, a persuader.

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[4] National Heritage Policy Act Hearing Before the Subcommittee on Parks, Recreation, and Renewable Resources of the Committee on Energy and Natural Resources United States Senate Ninety-sixth Congress Second Session on S. 1842, April 17, 1980, Washington, D. C.: Government Printing Office, 1980, Publication No. 96-118, p. 174.

The skills involved in working to preserve land that you do not own or control are different from those needed to maintain the national park system. The one common skill is expertise in the physical preservation of individual historic properties whether restoration of specific buildings or archeological protection measures.

Preservationists focus outward. They operate in a world of revenue-minded local governments, bottom-line conscious developers, angry citizens, hassled federal employees trying to construct a project. Their tools consist of information on historic sites, the provisions of Section 106 of the National Historic Preservation Act, in some cases local historic preservation laws, and large doses of moral suasion.

Park administrators focus inward in fulfilling their conservation mission. Their responsibility centers on the parks and any adverse effects to the parks occurring outside their boundaries.

Similarly, the Department of the Interior with its many land managing missions has too much on its plate to give historic preservation concentrated focus. The Department of the Interior, in fact, has built in conflicts of interest that further limit giving historic preservation goals a high priority. It was just this sort of conflict of interest that led to legislation removing the Advisory Council on Historic Preservation from the Department of the Interior in 1976 and to its reconstitution as an independent agency.

OTHER INDEPENDENT AGENCIES

Other institutions dealing with American culture are independent agencies notably the National Endowments for the Arts and the Humanities and the Archives. Other agencies dealing with regulation of others are independent such as the Advisory Council and the Environmental Protection Agency. It is impossible for preservationists not to look with envy at the federal appropriation for the National Endowments as they climb toward $200 million per endowment per year. Would the Endowments have fared so well if they were agencies of the Department of the Interior?

HERITAGE CONSERVATION AND RECREATION SERVICE

Whenever the suggestion of an independent preservation agency is raised, the subject of the Heritage Conservation and Recreation Service comes up. HCRS, or "Hookers" as it was commonly known, existed for a brief period that is remembered negatively now because of its extraordinary administrator.

The records of the National Conference of State Historic Preservation Officers indicate that the State-federal preservation relations were never as bad as under "Hookers."

However, the record indicates that the Historic Preservation Fund received its highest appropriations under HCRS (as did the Land and Water Conservation Fund). The leadership of HCRS was a pro-active, positive voice with Congress for funding.

Secondly, although protesting all the way, the State Historic Preservation Offices instituted substantial administrative improvements in funding accountability. HCRS also made the 24-month "use or lose" rule stick on annual awards to the States. HCRS took over the preservation program with a $35 million unobligated state grant balance accumulated under Park Service administration.

The HCRS experience also put preservation into an agency responsible for a $1 billion a year recreation program which received more attention and a higher priority.

CONCLUSION

The National Conference of State Historic Preservation Officers realizes that an independent agency will not create a preservation nirvana. An independent preservation agency will create a mechanism for the federal government to speak with one voice on historic preservation. An independent preservation agency will provide leadership and accountability for the federal government's preservation activities. An independent preservation agency will create one partner with which the States, local governments and tribes will deal. An independent preservation will create one point of light, one identifiable navigational star, to lead preservation into the twenty-first century.

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Testimony

of the

National Conference of State Historic Preservation Officers

on the

NATIONAL PRESERVATION POLICY ACT

S. 1579

February 22, 1990,

before the
Subcommittee on Public Lands, National Parks and Forests

I. INTRODUCTION

The National Conference of State Historic Preservation Officers is pleased to testify in favor of the National Preservation Policy Act, S. 1579. This bill makes needed improvements in the national historic preservation program as established by, principally, the National Historic Preservation Act as well as the Archeology Resources Protection Act and the Abandoned Shipwrecks Act.

The National Conference of State Historic Preservation Officers thanks Senator Bumpers, Chairman of the Subcommittee on Public Lands, National Parks and Forests, for holding hearings on this seminal bill for historic preservation.

The National Conference of State Historic Preservation Officers further expresses its deepest appreciation to Senator Wyche Fowler and his staff for introducing the bill and for being so open to the suggestions of members of the preservation community. The National Conference is committed ~~to~~ supporting Senator Fowler's efforts to obtain passage of this bill.

II. ROLE OF THE NATIONAL CONFERENCE AND THE SHPOs

The National Conference of State Historic Preservation Officers is the 501(c)(3), professional association of the officials in State government who carry out the national historic preservation program under the National Historic Preservation Act for the Secretary of the Interior. After the passage of the Act in 1966, the Secretary of the Interior decided to carry out this program, not with federal employees, but through the States. Each governor appoints a State Historic Preservation Officer who carries out the federal preservation program.

The State Historic Preservation Officers, therefore, are particularly interested in improving the operational aspects of the National Historic Preservation Act as it sets the legal framework for their day-to-day activities as State Historic Preservation Officers.

III. BACKGROUND

The members of National Conference have been involved in various changes to the National Historic Preservation for at least fifteen years. In the mid-1970's the SHPOs supported the creation of the Historic Preservation Fund, a separate account into which $150 million is deposited annually from the proceeds of offshore oil lease sales, and the 1976 "Jackson Report" on the national preservation program.[1]

The National Conference was an active participant in the discussions leading up to the National Heritage Policy Act in the late 1970's.[2] The National Conference continued its involvement through support of the National Historic Preservation Amendments Act of 1980.

In anticipation of its 20th anniversary, the National Conference decided to re-examine the National Historic Preservation Act. In 1985, the National Conference launched a major effort to up-date existing law under a legislative committee headed by J. Rodney Little, Maryland SHPO, and then by Valerie Talmage, Massachusetts SHPO. The National Conference invited interested parties to the discussions including national preservation organizations (Preservation Action, National Trust), archeology interests (Society for American Archaeology), and tribal interests (National Congress of American Indians). Representatives from federal agencies--Advisory Council and National Park Service--attended. After two years of work, at its March 1987 annual meeting, the NCSHPO membership adopted a draft bill as a model of improvements to the National Historic Preservation Act.

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[1] Advisory Council on Historic Preservation, for Henry M. Jackson, Chairman, Committee on Interior and Insular Affairs, United States Senate, 94th Congress, 2d Session, The National Historic Preservation Program Today, Washington, D. C.: Government Printing Office, 1976.

[2] Hearing Before the Subcommittee on Parks, Recreation and Renewable Resources of the Committee on Energy and Natural Resources United States Senate Ninety-sixth Congress Second Session on S. 1842 A Bill Entitled the "National Heritage Policy Act of 1979, April 17, 1980, Washington, D. C.: Government Printing Office, 1980, Publication No. 96-118. SHPOs who testified included Larry Tise, NC SHPO and President of the NCSHPO, Joan Baldridge, AR SHPO, J. Rodney Little, MD SHPO, and Louis R. Guzzo, WA SHPO.

In November of 1987 Senator Wyche Fowler asked the preservation community for suggestions on improvements to the national preservation program. The National Conference responded by providing the Senator with a copy of its draft legislation.

The National Conference has supported and continues to support Senator Fowler's preservation legislation.

IV. REASONS FOR SUPPORT

The National Historic Preservation Policy Act incorporates substantially the improvements to the national preservation program that the Conference is seeking.

A. CLARIFICATION OF ROLES OF PRESERVATION PARTNERS

The National Conference believes it is important to identify the role of each of the partners in the preservation program. This is accomplished clearly in the National Preservation Policy Act by establishing a separate title for each of the major players: the States, local governments, tribes, and the federal government in general.[3]

Legal definition of the partners is important to codify the roles each partner plays. It makes explicit the implicit divisions that have occurred as the preservation program has evolved.

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[3] The National Preservation Policy Act leaves the two lead federal preservation agencies, the Advisory Council and the National Park Service, in place. S. 1578, the Historic Preservation Administration Act, creates an independent historic preservation agency, combining the ACHP and the preservation functions of the NPS. S. 1578 was, in the NCSHPO bill, the "separate title" for the federal preservation partner.

B. IMPROVE PROTECTIONS FOR HISTORIC PROPERTIES

The National Historic Preservation Policy Act takes important strides toward strengthening federal law protecting historic properties, defined as on or eligible for listing on the National Register.

1. CODIFIES EXISTING PRACTICE

First, Section 102 strengthens the existing federal protection provision: Section 106 of the National Historic Preservation Act. This is accomplished by codifying the existing practice of consultation between a federal agency and a SHPO "during the earliest feasible planning phase" of a project and considering alternatives to harmful actions. This provision is not aimed at the conscientious federal agencies which take their preservation responsibilities seriously and work to consider preservation alternatives in accomplishing their agency mission. This provision is aimed at those federal agencies which remain recalcitrant in terms of complying with the law.

2. ADDS "NO FEASIBLE AND PRUDENT" TEST

Second, and importantly, Section 102 adds an incentive to the current preservation law. Section 102 requires that in the cases (8 to 10 out of 100,000) where a federal agency a SHPO, and the Advisory Council cannot come to an agreement on avoiding or mitigating harm to historic properties, that federal agency must demonstrate that no prudent and feasible way exists to take historic resources into account in accomplishing the federal project. Currently, the case of last resort for preservation are written comments from the Advisory Council to the federal agency. While Council comments often identify reasonable alternatives, the comments are not binding on the agency.

The addition of the "no feasible and prudent" standard will encourage federal agencies to take historic properties and the Advisory Council review process seriously. Two decades of experience in working with the preservation compliance process demonstrate that it works very well provided that all parties act responsibly.

For example,in California, the SHPO and the Federal Emergency Management Agency met within hours of the 1989 earthquake and set up a process that complies with federal preservation law, expedites FEMA assistance, and ensures that National Register properties receive appropriate treatment.

3. UNANTICIPATED ADVERSE EFFECTS

Section 102 also establishes a practice for handling situations where, during the course of a federal undertaking, unanticipated adverse effects develop. This addresses the problem created by the uncovering of an archeological site that was not found as a part of pre-project consultation. This section makes it possible for agencies to treat the unanticipated effect and proceed expeditiously with the project.

4. ANTICIPATORY DEMOLITION

Section 102(b) adds important new protections to historic properties by prohibiting the situation where individuals 1) decide to apply for federal assistance, 2) go ahead and demolish or destroy historic properties in the project area to avoid federal compliance responsibilities, and then finally 3) make the application for assistance.

5. EXTRA PROTECTION FOR CRITICAL PROPERTIES

The private sector preservation community, particularly since the struggle to preserve the Manassas Battlefield, has been pushing for additional protections for historic properties of overweening significance. This section establishes the mechanisms for those protections: seeking voluntary solution, suspending federal assistance, and obtaining a court injunction. These protections would apply to National Historic Landmarks and historic properties that the Advisory Council has determined are of "critical importance."

6. HISTORIC SHIPWRECKS

Section 123 asserts United States title on historic shipwrecks located in the Exclusive Economic Zone to protect such historic shipwrecks from treasure hunters.

C. IMPROVEMENTS TO THE FEDERAL ROLE

The National Preservation Policy Act makes important improvements to the role of all federal agencies in historic preservation (Sec. 101). S. 1579 makes explicit federal agency responsibilities to consider historic properties. In spite of notable successes, many federal agencies continue to ignore their responsibilities under the 1980 amendments to the National Historic Preservation Act.

Section 105 authorizes federal agencies, which may not wish to create a permanent historic preservation office to delegate preservation responsibilities to the Advisory Council or to State or tribal preservation offices.

The provisions of existing law are improved in Section 107 to encourage federal agencies to lease redundant historic property for adaptive uses, with the proceeds from the lease being returned to the agency for preservation of other historic property.

The Bill also strengthens federal agency responsibilities to respect other nations' historic preservation laws in terms of international actions (Sec. 108).

D. IMPROVEMENTS TO SHPO PROGRAM

Title II of the National Preservation Policy Act is devoted to the States and State Historic Preservation Program. Providing a separate title for States in itself reinforces the role of the State Historic Preservation Offices as partners in the preservation program, as do the subsequent titles for tribal preservation officers and local preservation commissions. The formal acknowledgement of the function of the partners is matched by a formal acknowledgement of the mutual responsibility of the partners: the listing of State Historic Preservation Officer responsibilities in Section 201(a) amending Section 101(b)(2-3) of the National Historic Preservation Act and the responsibilities of the federal partner to the States in Section 101(b)(4) of the Act.

The bill also enables the Secretary of the Interior and the Advisory Council to delegate authorities to qualified State Historic Preservation Offices. Currently, because of the limits of existing law, State Historic Preservation Office review is only conditional upon subsequent and duplicative review at the federal level. This creates unnecessary delays, especially when the concurrence rate on decisions between State Historic Preservation Officers and the federal agency runs at 90% or better.

A second efficiency provision is found in Section 202(b) whereby the Department of the Interior is required to provide expeditious notice to State Historic Preservation Officers of the State's allocation from the Historic

Preservation Fund. State Historic Preservation Officers have 24 months, 2 fiscal years, to expend their allocation. If a State receives its official award 6 months into the first fiscal year, that leaves only 18 months to select subgrant projects and for the successful subgrantees to complete the work.

E. CREATION OF TRIBAL HISTORIC PRESERVATION PROGRAM

The National Historic Preservation Policy Act breaks new ground in many places, but none more important than in the creation of the capability of Indian tribes to establish historic preservation offices and to manage their own historic preservation programs. The National Conference, spurred by tribal representatives, put such a tribal preservation program in the first draft of its proposed bill. The National Conference, as an association of State officials, is not in total agreement with the relationship established in Title III between the federal government and the tribes, to the exclusion of the States. However, the National Conference heartily endorses the establishment of tribal preservation offices.

F. PROTECTION FOR ARCHEOLOGICAL SITES

A majority of Title I of the bill concentrates on improvements to the Archeological Resources Protection Act and on protections for archeological sites. The bill reflects a nationwide concern for the protection of archeological sites from the ravages of nature and man. The bill strengthens the Archeological Resources and Protection Act permitting process, including the involvement of tribes in issuing permits on Indian land (Section 114) and increasing prohibitions of unauthorized archeology and penalties (Section 115).

Several sections in the bill are aimed at the improvement of the practice of archeology including: developing archeological research priorities (Section 116), holding a conference to address illegal international trade in antiquities (Section 117), setting professional standards for archeologists working for the federal government (Section 118), starting an artifact registration program (Section 121), and creating and Archeological Advisory Board to advise the Advisory Council (Section 122).

Perhaps the greatest accomplishment of the bill is Section 120 dealing with the treatment of human remains and associated grave goods. This language places the moral issues of human remains in high priority while also acknowledging the scientific goals of archeologists.

The bill makes a noticeable shift in federal agency responsibilities for preservation. This change is particularly visible in the end of Title I, the archeology sections. The text increases the responsibilities of the Advisory Council on Historic Preservation for federal leadership and inter-agency coordination on preservation. The National Conference of State Historic Preservation Officers believes this is a positive move as the Advisory Council is an independent agency whose sole responsibility is historic preservation. It owns no land; it lacks the inherent conflict of interest of multi-mission land managing agencies like the Department of the Interior.

G. IMPROVEMENTS IN LOCAL GOVERNMENT PARTNERSHIP ROLE

The fourth title concerns itself with the role of local government in the national historic preservation partnership. This separate title reinforces for localities as it does for States and tribes the significance of each governmental entity as an official partner in the relationship. The title acknowledges the role of both "certified local governments" which have successfully applied for an official relationship with State Historic Preservation Offices as well as local governments which are not "certified." It gives local governments explicit authority to appeal decisions of the State Historic Preservation Officer by adding a Section 101(c)(5) to the National Historic Preservation Act. A new Section 101(c)(6) sets out responsibilities of State Historic Preservation Officers to local governments including the authority to delegate the authority to perform functions of the Act to a qualified local government.

H. EDUCATION HIGHLIGHTED

Title V sets forth a strong mandate for federal education and training programs in historic preservation as well as a requirement for educational activities as a part of the role of partners that receive assistance from the Historic Preservation Fund.

V. CONCLUSION

The National Historic Preservation Policy Act is a comprehensive up-dating of the National Historic Preservation Act. S. 1579 is the product of extensive research on the part of

Senator Fowler and his staff as well as by partners in the preservation program, among whom the National Conference is proud to count itself. The bill represents the best efforts of the preservation community to ready the preservation ethic for the next decade, and hopefully, the next century.

Preservation has evolved dramatically, particularly in the 25 years since the White Conference on Natural Beauty that launched the National Historic Preservation Act. The decade of the 1970's saw the creation of the partnership between the federal government and the States, followed by local governments in the 1980's. In this past decade preservation became part of both the real estate boom and the post-1986 bust; preservation survived attacks from its federal partner. The result of the past 25 years is a re-affirmation of basic principles of the breadth of America's heritage, of the precious nature of the historic legacy of our predecessors, of the importance of making preservation part of a productive economy through adaptive re-use, of the need for constant vigilance against human predators who loot and destroy our heritage, and, after the fall of 1989, against the ravages of Mother Nature.

The National Historic Preservation Policy Act is designed to ready preservation for the 90's. It looks exclusively at the actions of governments. It is silent on the primacy of the private sector in the ultimate preservation of our heritage, not as a means to deny that primacy, but rather as an acknowledgement that federal law is not the place to control or direct private efforts. The National Historic Preservation Policy Act will, rather, improve the operation of government to facilitate the essential work of the private sector.

In its focus on government the National Historic Preservation Policy Act embodies several important principles:

acknowledgement, officially and explicitly, of the roles of each of the partners in historic preservation,

delegation of authority to make decisions to the lowest level possible, to the level of authority closest to the resource,

a major strengthening of the ability of federal law to protect historic properties, and

a shift in emphasis for preservation leadership to the Advisory Council as an agency with no cause, no mission but historic preservation.

Senator BUMPERS. Mr. Lovis.

STATEMENT OF DR. WILLIAM LOVIS, CHAIRMAN, GOVERNMENTAL AFFAIRS COMMITTEE, SOCIETY FOR AMERICAN ARCHAEOLOGY

Dr. LOVIS. Thank you, Mr. Chairman.

The Society for American Archaeology is very pleased to be able to provide comment on this very important pair of historic preservation bills. We have submitted written testimony and also a detailed analysis of the archaeological provisions of 1579 and 1579 which we would like entered into the record.

The Society for American Archaeology has as its primary concerns the protection, preservation and study of the non-renewable archaeological heritage of the United States, and I want to stress the term "non-renewable". Once these resources are destroyed, they cannot be replaced.

The SAA has identified several major issues which face archaeology and archaeological preservation in the United States at present and, presumably, in the future. These include, firstly, the looting and vandalism of sites, the whole problem of site destruction, which includes a range of problems including the intentional mining of sites for artifacts to enter national and international markets, intentional vandalism of sites through bulldozing, structure destruction, defacing and so forth, and then unintentional destruction through other forms of land use—for example, offroad vehicles destroying ancient roadways.

A second major concern includes the illicit antiquities trade, which includes an illegal trade in human remains, illegal movement of artifacts, monument fragments, et cetera, in violation of international reciprocity agreements which prohibit the import or export of artifacts.

A third major area is the protection of sites on private land and the identification of sites on private lands. There are currently few, if any, incentives for private property owners to protect and preserve significant sites in their custodianship under current law.

We feel that the contributions of S. 1578 and 1579 to the solution of these problems outweigh any current minor issues that we might have over the specifics of these bills. We feel that 1578 and 1579 significantly strengthen the Archaeological Resource Protection Act and the Historic Preservation Act by providing greater protection, site protection, through the National Register and National Monuments programs.

It further broadens the enforcement of site protection and the associated penalties that accrue to individuals who violate existing law. It continues the ongoing anti-looting initiatives of Federal land management and compliance agencies through mechanisms such as the identification of archaeological resources of critical importance.

In terms of the issue of the illicit artifact trade, the establishment of an international conference on the antiquities trade is a significant step in the right direction to getting some resolution to this problem. The Society for American Archaeology would hope that the outcome of such a conference would include some consensus statement finding illegal international trade in antiquities an unacceptable phenomenon, that there be recommendations for legislation and accords to curb such activities at the national and international levels, and that there be recommendations for cooperative efforts to enforce the provisions of such legislation and accords.

Educational programming is an important component of 1578 and 1579. We see it expanding the base of trained professionals and paraprofessionals who can disseminate archaeological and historic preservation programming and information to the broader public through interpretation and training. And we firmly believe that by broadening the base of the educated public we are going to enhance the ability of the citizenry to protect its historic national heritage.

S. 1579 promotes the preservation of archaeological resources on private land by expanding State historic preservation programs to identify National Register-quality sites on private properties, and to provide incentives for preservation and the dissemination of information.

Furthermore, the establishment of tribal preservation programs takes a significant step in incorporating native peoples into the historic preservation program in such a fashion that they will be partners in preserving the collective national heritage of the United States.

Mr. Senator, my other comments are in my written statement and I will conclude my testimony at this time. I thank you for the opportunity to comment.

[The prepared statement of Dr. Lovis follows:]

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For the Senate Energy and Natural Resources Committee Subcommittee on Public Lands, National Parks and Forests

S. 1578, Independent Historic Preservation Agency
and
S. 1579, National Historic Preservation Policy Act

Statement by William Lovis, Ph.D.
Chairman, Governmental Affairs Committee

February 22, 1990

Mr. Chairman, the Society for American Archaeology (SAA) is pleased to have the opportunity to present this testimony. The continued interest, support and leadership of your subcommittee is a major stimulus for archaeological resource protection, research and interpretation. The Society would also like to thank Senator Fowler for his leadership in introducing this legislation and the staff from the Senator's office for all of their hard work.

The Society for American Archaeology is an international scholarly and professional association comprised of both professional and avocational archaeologists concerned about the discovery, interpretation and protection of the archaeological heritage of America. As such, the SAA has had a long partnership with the Bureau of Land Management, USDA Forest Service, National Park Service and other Federal agencies with similar missions in their efforts to preserve and promote the nation's cultural and natural resources.

OVERVIEW

Archaeological sites contain the undocumented remains of past human activities and are fragile sources of information about the prehistory and history of the nation. Looting of archaeological sites is a national problem that has reached crisis proportions. Specific remedies are needed to help address this crisis.

The past 15 years have seen major advances in the incorporation of archaeological and historic preservation concerns in public law. Archaeology, in particular, has seen unprecedented growth during this period. Archaeological review is now routinely incorporated into planning by Federal agencies. Archaeologists reside in virtually every branch of Federal land management and land use agencies.

Site protection and enforcement has assumed an increasingly higher priority as depredations against these non-renewable resources accelerate and become a major threat to the preservation of our collective national heritage. Even as larger numbers of sites become known, disturbance by looters increases at an alarming rate. Thus, despite the best efforts of legislators, Federal agencies, the professional archaeological community and other interested groups including Native Americans, it becomes clear that greater coordination, better incentives and more incisive definition of the problems faced by archaeology and historic preservation need to be implemented at the National level.

The Society for American Archaeology believes that S. 1578 and S. 1579 jointly are among the most significant steps taken in recent years to identify and remedy the several problems that face the future of archaeology in the United States. Indeed, S. 1578 and S. 1579 take the lead in this effort and several provisions of the legislative package can be used as models for other legislation addressing these issues.

Following summarizes some of the major provisions of the two bills which directly impact on archaeological resources, both prehistorical and historic. A more detailed analysis, with the Society's views and recommendations is attached.

S. 1578 - HISTORIC PRESERVATION ADMINISTRATION ACT

Independent Agency

The creation of the Independent Historic Preservation Agency proposed by S. 1578, with allied Preservation and Archaeology Advisory Committees recognizes the importance of archaeology and historic preservation by giving it independent agency status. Such centralization should have the effect of providing greater coordination to programmatic efforts in a variety of areas. Significantly, the Archaeology Advisory Board gives archaeology an independent voice in advising the agency on policy and professional standards, an ability which has been lacking in the past. Recognition that the national heritage with which archaeology concerns itself is not the property of diverse special interest groups is reflected in Advisory Board membership, which membership draws from professional archaeologists, avocational archaeologists and Native Americans.

National Center for Preservation Technology

Increasing concern with the long term management of the national heritage is addressed by the mandate given the National Center for Preservation Technology to develop and disseminate information on preservation and conservation technologies. The SAA is one of the founders of the National Coalition for Advanced Preservation Technology (CAPT). CAPT is a coalition whose goal is to establish the multi-disciplinary National Center for Preservation Technology called for in the 1986 Office of Technology Assessment report, Technologies for Prehistoric and Historic Preservation.

S. 1579 - NATIONAL HISTORIC PRESERVATION POLICY ACT

Benefits of Title I

The SAA strongly endorses a number of the components of Title I in S. 1579. Among the most significant contributions of Title I is its forthright attempt to bolster management, protection and enforcement efforts associated with the protection of archaeological sites and artifacts. This is accomplished through several vehicles. Federal agency responsibilities for identifying and protecting sites are clarified and codified and provisions are included for needed archaeological work when a property is threatened with unavoidable destruction. Both the National Register and National Landmark systems are expanded by S. 1579, thereby bringing more sites under effective protection and management. Threatened resources will be identified every three years and recommendations developed for their protection. Historic and archaeological resources of critical importance will be identified and protected through new legal mechanisms, including voluntary solutions, suspension of federal assistance or court injunction. Prohibitions on illicit archaeology and transactions involving resources on Federal and tribal land are strengthened. Additional protection is provided for submerged archaeological resouces embedded in the seabed in the Exclusive Economic Zone. These are all long overdue measures which the SAA supports.

Under S. 1959, the recent rampant growth of the international trade in stolen antiquities, a problem of growing concern worldwide, would begin to be addressed by an International Conference on the Antiquities Trade. This approach is strongly endorsed by the SAA. Recognition of the role of archaeology on private lands also contributes strongly to the legislation. This multi-pronged approach to site protection, management and the illegal antiquities trade is a significant step toward solving long-term archaeological and preservation problems.

SAA has a number of specific recommendations concerning this title which are included in the detailed analysis attached to this testimony.

Treatment of Human Remains

Among the major contributions of S. 1579 is the creation of a consensus position on the treatment of human remains and associated grave goods. Specifically, S. 1579 clearly balances the rights of descendants, potential descendants and long term scientific research interests on a case by case basis. Clear conditions for disinterment are established and a range of disposition alternatives are specified. Moreover, a commission is called for to adjudicate cases where no living descendants can be identified. Unlike other legislation pending in Congress on this matter, S. 1579 recognizes that there are important gains that can be made by recognizing both the contributions of long term scientific study and the interests and concerns of Native American peoples. The perspective on this issue established by S. 1579 can serve as a model for other bills addressing reburial and repatriation.

Title II State Programs and Title III Tribal Programs

Title II of S. 1579 restates and strengthens the state historic preservation system and Title III establishes parallel tribal historic preservation programs. The SAA supports strongly both of these efforts to expand and strengthen the national preservation program. In particular, SAA welcomes and support the creation of substantially autonomous tribal programs for archaeology and historic preservation. We feel it will further integrate the concerns of indigenous peoples with preservation of the national heritage and the long term management of significant resources.

Title IV Local Programs and Title V Public Education

Two significant areas of concern for archaeology have been the lack of incentives for local units of government to involve themselves aggressively at a programmatic level in preserving the past and the lack of well-directed public education programming designed to attract the public to historic preservation efforts. Title IV of S. 1579 would help remedy local programmatic deficiencies by continuing and strengthening the system of local government certification through the SHPO's and encouraging programs for local level assistance. Title V would foster the development of a comprehensive preservation education and training program package directed at several audiences. Individuals who might otherwise not be involved will be brought into the preservation network with a significant background in how historic preservation works and why it is an important undertaking. Building this foundation of support is essential to the long term success of preservation efforts at large and, in particular, can do a great deal to increase the public's understanding and appreciation of archaeological resources.

SUMMARY

S. 1578 and S. 1579 are far reaching pieces of legislation that will have a positive impact on the future of archaeology and historic preservation. While certain components of the bills will no doubt be modified by future input and debate, the intent, content and overwhelming substance of the bills allows endorsement by the Society for American Archaeology. We feel that the benefits of this package will have a positive impact on the conduct of archaeology and historic preservation in the United States.

I thank you for the opportunity to testify on this important legislation.

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DETAILED ANALYSIS OF ARCHAEOLOGICAL PROVISIONS OF S. 1578 and S. 1579

Senator Wyche Fowler introduced S.1578, the Historic Preservation Administration Act and S. 1579, the National Historic Preservation Policy Act on August 4, 1989. Companion legislation (H.R. 3412) was introduced by Representative Charles Bennett on October 5, 1989. Many provisions in these bills relate directly to archaeological resource management, protection and interpretation. Many of the archaeological provisions are offered as amendments to the Archaeological Resources Protection Act (ARPA).

Following highlights the major provisions relating to archaeological resources by topical interest. Except where noted otherwise, the analysis refers to S. 1579 (and identical provisions in H.R. 3412). The page numbers are from S. 1579. **The views or recommendations of the SAA on specific provisions are highlighted in boldface.**

I. ORGANIZATION

A. Agencies: S. 1579 retains the status quo on the organization of Federal archaeological programs and the Secretary of Interior/National Park Service and Advisory Council on Historic Preservation. S. 1578 would combine their functions into a new independent agency.

> **SAA supports the concept of the independent agency as proposed in S. 1578, but absent such a change also supports the provisions in S. 1579 which strengthen the existing roles of Interior and the Council.**

B. Advisory Committee: S. 1578 establishes a Preservation Advisory Committee modeled after the current Advisory Council on Historic Preservation. The membership would be revised somewhat to specify more clearly the appointments of Federal agencies, to require that the three members representing the general public have a "demonstrated interest or involvement in historic preservation," and to limit the four persons expert in historic preservation to the fields of architecture or architectural history, American history, archaeology and anthropology.

> **SAA supports the changes and would recommend their incorporation into S. 1579 as modifications to the existing Council should the independent agency envisioned in S. 1578 not be enacted.**

C. Archaeology Advisory Board: Both bills add a new section to ARPA to establish an Archaeology Advisory Board (Section 7 of S. 1578, pages 11-12 and Section 122 of S. 1579, pages 56-58). The purpose of the board is to provide advice on policies, standards, and other matters relating to archaeology. The board would consist of eight members: four professional archaeologists--two specializing in prehistoric archaeology and two in historic archaeology-- two representatives of Native American interests, one representative of avocational groups or interested organizations and one representative of the general public.

> **SAA supports the establishment of an archaeology advisory board but recommends that, because of the professional/technical nature of this board, that the provision for a member representing the general public be dropped. This has the added advantage of providing for a somewhat smaller, odd-numbered, seven-member board which would facilitate decision making.**
>
> **SAA also recommends that provisions be added to stagger the lengths of tenure (currently all would serve equal four-year terms), place a two-term limit on membership, provide for continuation of an expiring membership until a new member is appointed, provide for the appointment or election (SAA prefers the latter) of a chairman, authorize the use of Federal property and staff assistance, provide for reimbursement for expenses.**

D. Preservation Technology: Section 8 of S. 1578 would establish a National Center for Preservation Technology to develop and transfer preservation and conservation technologies for the identification, evaluation, conservation and interpretation of prehistoric and historic resources. This would be done through research, professional training, technical assistance and programs for public awareness. The director would be appointed by the Administrator of the Historic Preservation Agency with the concurrence of the 19-member Board of Trustees. The board would provide leadership, establish priorities and submit annual reports to the President and the Congress. Regional analytical or technical laboratories and service facilities would be established. Grants and donations to the Center and contracts and cooperative agreements would be authorized.

> **SAA strongly supports creation of the National Center for Preservation Technology and recommends that, if S. 1578 is not enacted, that the provisions for its establishment be included in S. 1579, and that references to the Historic Preservation Agency and its Administrator by modified to reference the National Park Service and its Director.**
>
> **Further refinements will be needed in the legislation to clarify the Center's roles and responsibilities with respect not only to the National Park SErvice but to other Federal and non-Federal entities. The purpose of the Center is to be a coordinating one, to utilize a consortia approach that brings together existing as well as new facilities for preservation technology development and transfer.**
>
> **In addition, direct appropriations to the Center from the Congress should be clearly authorized to be be used to further the purposes of the Center and to provide funds to affiliated entities, such as the regional centers. The provision for the Center to have matching grants from the Historic Preservation Fund would thereby not be necessary.**

II. REBURIAL

S. 1579 contains a number of provisions relating to the reburial and/or repatriation of human remains and grave goods. (Section 120, page 51 for policies & procedures; Section 113, pages 34 and 35 for definitions).

A. Process: The bill establishes a process for archaeologists, museums and Native Americans to resolve issues of concern about human remains and grave goods. Every state, tribal and local historic preservation program receiving Federal funds would adopt standards which address grave disturbances due to land use and development, natural causes, archaeological excavation and other related factors. It finds that, as a general rule, human remains and grave goods should not be disturbed. If there is a legitimate need for disturbance, the remains and grave goods should be handled in accordance with appropriate archaeological methods of recovery and documentation. If excavated, they should be disposed of in a respectful manner that balances the interests of descendants and of research. If living descendants are identified they should determine the manner of treatment and disposal. Where there are no living descendants a commission or other entity will determine treatment.

> **Although SAA would prefer any new reburial legislation to wait until the reburial/repatriation provisions of the newly enacted legislation authorizing the Smithsonian National Museum of the American Indian (P.L.101-185) have had a chance to be tested, SAA supports the provisions in S. 1579 as a reasonable and fair way to balance the rights of descendants and the concerns of affected Native Americans with the interests of science and the contributions that can be gained from scientific research.**

B. Definitions: The bill defines "descendant" to mean a living person or group evidenced by biological, archaeological, anthropological, folkloristic, historical, or other research to be descended from an historic or prehistoric group of people. The term "grave goods" refers to any object that was found in a grave and appears to have been deliberately placed in association with the human remains. "Human remains" means a human body or part of body in skeletal, fossil, mummified, unmummified or other form. The bill deletes graves and human skeletal materials from the definition of archaeological resource.

> **Although SAA generally supports these definitions the Society recommends that the terms used in the new Smithsonian legislation, especially the definition of "funerary object" and "burial site" be utilized in place of the relevant definitions in S. 1579.**

III. ANTI-LOOTING

The issue of archaeological looting and vandalism is covered very broadly in the bill and ranges from protection of resources on private lands to amending the 1579 Archaeological Resources Protection Act (ARPA), to establishing an artifact registration system. (Sections 113 - 122, pages 30-58)

A. Definitions: S. 1579 would amend ARPA to include a number of key definitions, many of which are new or substantially changed from existing law. (Section 113, pages 30-35).

The definition of "archaeological resource" is changed from the laundry list in the present Act to a much broader definition: "a historic property whose significance is derived in whole or in part from its past or potential contribution to the archaeological study of history or prehistory." Other definition changes include "Federal land manager" which is made broader by including the Indian land manger; "public lands" definition is amended by deleting the reference to the Smithsonian Institution; "Indian tribe" definition is amended by adding that a tribe is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

New definitions include "descendent," "grave goods" and "traditional cultural authority" (see above, under Reburial). Other newly defined terms include "cultural affiliation" which means a relationship between a modern group of people and a historic or prehistoric group based on cultural similarities. The term "artifact" means material in or derived from an archaeological resource or other historic property. For example pottery, stone carving, weapons, tools, and articles of personal adornment, architectural remains and the remains of foodstuffs and the by products of tool manufacture. "Historic property" or "historic resource" has the same definition as in the National Historic Preservation Act. The term "traditional cultural authority" means a person in a Native American group or other social or ethnic group who is recognized by members of the group as an expert on the group's traditional practices.

SAA supports the new definitions (although see comments above under "Reburial").

B. Federal and Indian lands: The bill changes some provisions of ARPA which regulate the taking of archaeological resources on Federal and Indian lands and the prohibitions on the sale, purchase, transport or entry into interstate commerce of items taken in violation of the Act. (Section 114, pages 35-45). Following analyzes some of these provisions.

1. Permits (Pages 35-38): ARPA's existing permit system is continued for excavating archaeological resources. However, under Section 114, the Advisory Council is given a new role in promulgating regulations authorizing Federal and Indian land managers to issue permits for individuals and organizations (including government agencies when not acting pursuant to Sections 106 or 110 of the National Historic Preservation Act). New information requirements from potential permittees are included, as are new stipulations relating to the granting of the permit. Provisions for suspension of permits are also included.

Although SAA recognizes the need for improving coordination of the ARPA permitting process currently carried out through the Secretary of the Interior with the Council's 106 process, SAA does not believe that the actual authority for promulgating the regulations should be shifted to the Council. The existing permitting system, which is carried out under uniform regulations developed by all the affected Federal agencies with the Coordination of the Secretary of the Interior works reasonably well and does not need such a dramatic change. If, however, S. 1579 were to be enacted as introduced, SAA would recommend that, at a minimum, the Archaeology Advisory Board be consulted in the development of the regulations.

Some of the other provisions in this Section merit attention, including the provisions for the final disposition of artifacts and the requirement for an applicant to have a plan for the conservation and curation of recovered materials.

2. Notification and Tribal Provisions (p. 38-39): A new requirement is added for Federal authorities to notify potentially affected groups when a permitted activity may affect a traditional religious practice or property of cultural importance to an Indian tribe or other Native American group. Such groups must be consulted and their views taken into account when final decisions are made about the permits. No Federal permit would be required if a tribe has a regulatory ordinance for excavations, requests that a tribal permit be substituted and the Advisory Council determine that the protections would be substantially equal to the Federal ones.

   SAA supports the notification and tribal permitting provisions as they are carefully defined in S. 1579.

3. Suspension and Revocation (p. 39) A permit may be suspended by a Federal or Indian land manager when the permittee has violated section 4(a) of ARPA or section 106(a) of the National Historic Preservation Act. A permit may be revoked upon assessment of a civil penalty or criminal conviction against the permittee in violation of ARPA.

   SAA strongly supports the suspension and revocation provisions.

4. Prohibitions and Penalties (Pages 42-45)

   The bill adds to the list of unlawful activities the term "destroy." They also extend the provisions to include those persons who "counsel, solicit, procure or employ another person to excavate.." archaeological resources on Federal or Indian lands unless the activity is pursuant to Section 106 of the National Historic Preservation Act or a permit under ARPA. Similar prohibitions are included with respect to the sale, purchase, exchange etc. of such archaeological resources.

   ARPA's initial $10,000 fine for a first conviction of a person who "knowingly violates" the prohibitions is deleted, and a new two-tiered test is substituted. Where the cost of repair, restoration and return is less than $500, the penalty is a $20,000 fine and up to one year in prison. Where restoration and return is impossible or is more than $500, the penalty is a $50,000 fine and not more than two years in prison. The $100,000 fine/up to 5 years in prison for subsequent violations is retained.

   Also, a new provision is added for the Advisory Council, in consultation with the Justice Department, to promulgate regulations for assessment and oollection of civil fines on persons who violate any provision of the Act. Civil fines may be in addition to criminal penalties. The fines are to be used to pay the cost to restore, repair, return, stabilize, research and interpret the resource involved (or a similar resource if the one in question has been destroyed or damaged beyond restoration). If the resource is on or removed from Indian lands, the fine will be paid to the appropriate tribe or Indian landowner. Fines in excess of the amount needed to restore the resource will be paid into the Historic Preservation Fund.

   The exemptions for the surface collection of arrowheads are removed. Also removed are the provisions for any "aggrieved" person to petition for judicial review of a civil penalty. Added is a provision authorizing the Advisory Council to offer a $1000 reward to a person who furnishes information leading to a conviction or assessment of a civil penalty for violation of the Act.

   SAA strongly supports these provisions.

C. **Private Lands**: Anti-looting also relates to sections of the bill which deal with protection of sites on private lands. (Section 119, pages 50-51). In order to promote and protect archaeological resources on private lands, the Advisory Council would promulgate regulations to ensure state preservation programs take into account archaeological sites on private lands. Owners of private land with archaeological resources are encouraged to preserve these resources in place and, if necessary, to conduct excavations to meet Federal standards, to register artifacts, to donate or lend significant artifacts to research institutions and to allow access to resources for research.

> **SAA strongly supports these provisions, but recommends that the Secretary of the Interior, who has the responsibilities for reviewing and approving State historic preservation programs, be authorized to promulgate the regulations rather than the Advisory Council.**

D. **Artifact registration**: In an effort to curb the illegal market in antiquities and artifacts, the bill provides that the Advisory Council shall establish a registration program for artifacts that are removed from archaeological sites in the United States and abroad. (Section 121, page 55).

Registration of artifacts from Federal lands and projects will be mandatory. Registration of materials from private lands will be voluntary. Registration will be carried out in cooperation with appropriate Federal agencies, SHPO's, Tribal historic preservation officers and others. Only lawfully recovered artifacts may be registered. The Advisory Council is exhorted to discourage interstate and international traffic in unregistered artifacts.

> **Although SAA supports the concept of artifact registration, the Society questions the feasibility of such a registration system on a national scale. Nevertheless, given the current dire situation of the illegal trafficking in looted artifacts, the registration system is worth a try. Perhaps a pilot project could be substituted initially as a test of such a program.**

E. **International Conference on Antiquities Trade**: The bill directs the Advisory Council, in consultation with the Cultural Property Advisory Committee (in the USIA) to call for and organize United States participation in an international conference on the international antiquities trade (Section 117, pages 48-49). The conference would focus on adequate controls, enforcement and incentives to ensure that traded artifacts are from properly conducted excavations and on exchange of information between nations to enhance public knowledge of each nation's cultural heritage. No date for the conference is set, but the bill states that the goal of the conference is to have in place an effective program to control looting and trafficking in stolen artifacts in time for the celebration of the 500th Anniversary of the Columbus Discovery Voyage in 1992.

> **SAA strongly supports these provisions and suggests a number of additional provisions, including a timetable for when the conference will be held and when the report would be prepared and distributed. More detailed guidance could be provided, calling for a concensus statement reaffirming the United States' position that the illegal international trade in antiquities is unacceptable; recommendations for legislation and accords to curb such activities at the national and international levels; and recommendations for cooperative efforts to enforce the provisions of such legislation and accords.**

IV. ABANDONED SHIPWRECKS:

S. 1579 (but not H.R. 3412) also amends the Abandoned Shipwreck Act of 1987 to extend its provisions beyond the current limit on State submerged lands (generally 3-miles from shore) to include shipwrecks and archaeological resources embedded in or lying on the seabed in the Exclusive Economic Zone (generally 200 miles from shore). The United States asserts title to these resources and, in the case of disputes, the Secretary of Interior, in consultation with the Archaeological Advisory Board and Secretary of State, shall determine whether a site or object is included.

SAA strongly supports these provisions, but recommends that enactment wait for another year so that the provisions of the Abandoned Shipwreck Act, enacted in 1988, have an opportunity to be further tested.

V. ARCHAEOLOGICAL RESEARCH:

The bill provides that archaeological research priorities would be established and periodically revised in consultation with the Archaeology Advisory Board and Advisory Council on Historic Preservation. (Section 116, page 45). These priorities will address questions of anthropology, history and related disciplines to which archaeological research can provide information. The Advisory Council may assemble study groups to assist in formulating the priorities, which must take into account relevant priorities in State historic preservation plans. Regional Archaeological Review Groups will be established to translate the priorities into regional terms.

All Federal agencies will be required to ensure that scopes of work proposed by archaeologists include a discussion of which of the research problems they propose to address and justify their selections. The Advisory Council will coordinate the organization of data and periodically report to the President, Congress, relevant research communities and the public.

While SAA is sympathetic to the intent of these provisions and the need for better coordination of research and dissemination of research results, the Society questions whether imposing a new national system of research priorities will, in fact, create more problems than it resolves. No similar requirement is included in the legislation for other historic properties. Many archeological sites are quite small and it would often be extremely difficult if not impossible to fit the research to be conducted at a specific within a Federally imposed priority system. At the very least, the burden for the use of these priorities should be on the Federal agencies themselves and not, as proposed in Section 15 (c)(1) just on the archaeologists who conduct the work on behalf of those agencies.

VI. PROFESSIONAL STANDARDS FOR ARCHAEOLOGISTS

S. 1579 requires the Advisory Council to establish professional qualifications and performance standards for archaeologists and procedures to assure that these are met. (Section 118, page 49). Archaeologists wishing to do work on Federal lands, with Federal funds or to register artifacts will be required to meet the professional standards. In setting the standards, the Advisory Council is directed to take into account the certification systems of international, national, state and local archaeological organizations. The Advisory Council is directed to consult with the Archaeology Advisory Board, Society of Professional Archaeologists, Society for American Archaeology, Society for Historical Archaeology, Smithsonian Institution and other interested parties.

SAA recognizes the desire of Federal agencies to have assurance that the archaeologists who contract with them are professionally qualified to do so. Such a need is as great if not even greater with other preservation professionals who, for the most part, are not required to meet the rigorous educational requirements and training which most archaeologists achieve to obtain a doctorate degree.

SAA does not oppose the establishment of standards for Federal contract archaeology (and other disciplines where appropriate) but would suggest that the professionals working within those agencies--and not just those under contract--be required to meet those standards. If the provision is enacted, SAA welcomes the opportunity for participating in the developments of these standards and quidelines as provided in this section of the bill.

VII. OTHER ARCHAEOLOGICAL PROTECTION AND ANTI-LOOTING PROVISIONS:

Many other provisions in S. 1579 would directly and indirectly add protection for archaeological resources and address other anti-looting issues. These include provisions in which relate to protection of sites in Title I (especially pages 5-23) and to the establishment of education, interpretation and training programs. (Title V, pages 76-78).

A. Historic and Archaeological Resources of Critical Importance: Under Title I, the Advisory Council would be authorized to develop criteria to identify resources of critical importance to the nation, state, tribe and localities (Section 111, page 23-26). In addition, the Advisory Council would also determine ~~resources~~ facing significant threats and develop protection standards for these properties and their surroundings. These actions will be done in consultation with the SHPO, Tribal HPO and local governments. The Advisory Council may take appropriate action to avoid or mitigate the occurrence of a threat to a critical historic property, including voluntary solution, suspension of Federal assistance and court injunction.

SAA strongly supports these provisions in the bill which add protections for all historic properties, including archaeological resources.

B. Education and Training: Title V directs the Secretary of the Interior, in consultation with several other Federal agencies and organizations (including the SAA) to develop and implement a comprehensive preservation education and training program. The elements of such a program are identified and a requirement is included that Historic Preservation Fund recipients, including subgrantees, carry out appropriate forms of education and training as components of their federally assisted programs.

SAA strongly supports these provision as some of the most significant ones in the bill. A more enlightened public, more sensitive to their heritage generally and to the needs of preservation specifically, would go a long way to avoid the kinds of problems addressed by the more regulatory aspects of the legislation (which SAA also strong supports).

Senator BUMPERS. Thank you very much.
Ms. Funk.

STATEMENT OF KAREN FUNK, LEGISLATIVE ANALYST, NATIONAL INDIAN EDUCATION ASSOCIATION

Ms. FUNK. Thank you. The comments of the National Indian Education Association are limited to S. 1579 and, within that, to the provisions that are of particular importance to Indian and Alaskan native people.

Our organization supports S. 1579, with one significant change that we would request. In addition to our statement, one of the attachments to our testimony is something that we would like considered in fact part of our testimony because it is something we did not repeat in our statement, and that is the joint statement presented to your House counterpart, the House Public Lands Subcommittee. It is a statement by the Miccosukee Tribe of Florida through the Affiliated Tribes of North Dakota and the Metlakatla Indian Community of Alaska, and that testimony deals with need for establishing tribal historic preservations and also, very importantly, the need to have better partnerships between tribe and State historic preservation programs.

As has been mentioned by a number of witnesses, Indian tribes have been virtually excluded from the nation's historic preservation program and, in the more than 20 years since we have had that program under the auspices of the National Historic Preservation Act, fiscal year 1990 was the first year that tribal governments saw any money at all.

And the reaction to this really, you know, what is not a big pot of money yet—only $500,000 in fiscal year 1990—has just been a tremendous outpouring of tribal interest. And in checking with the Park Service yesterday, they said they have approximately 200 tribal applications for that $500,000, and I would expect that 15 to 20 grants will be able to be approved at that funding level.

Your Subcommittee is interesting in that most of your members in fact have significant numbers of Indian people in their States, and so I would hope that in your Subcommittee's recommendations to your budget and appropriations committees that you would give favorable consideration to continued funding and increased funding for tribes under NHPA for ethographic studies on Park Service lands and also that some of this anti-looting money, which is very important, that some of that be funneled to the Bureau of Indian Affairs for use on Indian lands. And that really does not happen now.

S. 1579 deals with both tribally-based programs, which is very important, but it also deals with tribal relationship to State programs, which is very important, and vice versa, because tribal history does not stop at these artificial reservation boundaries and tribal religious and cultural and historic interests do not stop because in 1898 somebody drew a line and said this is where you live.

So it is very important that both the State and tribal programs be very enriched by in fact sort of the institutionalization of relationships between tribal and State programs. But, first of all, we have to get tribal programs established.

The final thing I would say is there are two changes we would ask in the bill, should you go to markup. One is we would like section 120 of the bill dealing with human remains and grave goods deleted. I think that section was a good faith effort to deal with a very difficult problem of human remains and grave goods, but the truth is there is not a consensus on that, and tribes have been working for over a year on independent bills.

There is a handful of them now in the Senate and the House dealing with this issue, and we would prefer to work through that route. In the Senate, Senators McCain and Inouye have quite good bills on this issue and on the House side Congressman Udall has a bill. This request is made not only on behalf of the organization I am here for, but the Native American Rights Fund, who wants it clearly known that they have not been a party to a consensus on that particular section of the bill.

And the last thing I would say is section 301 of the bill deals with what the Secretary of Interior does when a tribe comes and says here is our historic preservation plan; approve or disapprove it. And in that section it says the Secretary will consult with other tribes, with local governments, with Federal agencies, with SHPOs and the public and then make a decision. That seems somewhat heavy-handed and quite a burden. State programs do not have that kind of a consultation requirement, so we would like to see that section refined.

Thank you.

[The prepared statement of Ms. Funk follows:]

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STATEMENT OF THE NATIONAL INDIAN EDUCATION ASSOCIATION

Before the Senate Energy and Natural Resources
Subcommittee on Public Lands, National Parks and Forests

on S. 1579, National Historic Preservation Policy Act

February 22, 1990

The National Indian Education Association (NIEA) is pleased to have the opportunity to present testimony on S. 1579, the National Historic Preservation Policy Act. We are a nonprofit association of approximately 2,000 educators, most of whom are Indian or Alaska Native, dedicated to providing quality education for our people.

The National Indian Education Association at its annual conference held in Anchorage, Alaska in October of 1989 passed a resolution supporting specific provisions in S. 1579 and commending Senator Wyche Fowler for his successful effort to provide the first-ever monies (FY1990) for tribal historic preservation programs. Attached is a copy of that resolution.

We have also attached recent testimony provided to your House counterpart subcommittee from the Three Affiliated Tribes of the Fort Berthold Reservation, the Miccosukee Tribe of Indians and the Metlakatla Indian Community regarding the need for funding for tribal historic preservation programs and for funding for ethnographic studies on National Park Service lands. That testimony, while submitted for a FY1991 budget oversight hearing, provides substantial background information on the current status of tribes under the National Historic Preservation Act and on the nature of tribal historic preservation needs. NIEA strongly concurs with this testimony and would ask the Committee not view the tribes' statement as merely an attachment to our presentation, but rather as an integral part of it. We will not, therefore, repeat much of the information contained in the February 8, 1990 statement of the Three Affiliated Tribes, the Miccosukee Tribe and the Metlakatla Indian Community.

Also an additional attachment is a Memorandum describing the tribal provisions of S. 1579, including comparison with current law, which we trust you will find helpful.

The National Historic Preservation Policy Act, S. 1579, is progressive legislation from the perspective of tribal historic preservation needs. The bill is intended to make tribes, at long last, full partners in our nation's historic preservation program. We are appreciative to the National Conference of State Historic Preservation Officers for their inclusion several years ago of tribes in discussions of tribal historic preservation concerns. We have had a federal national historic preservation program for over 20 years, but FY1990 is the first time any funding has been provided to tribal governments under that Act. When one considers that all of the United States was, until recently, Indian country, it is amazing that we have focused our historic preservation efforts almost exclusively on a European, built-environment, program. The inclusion of tribal monies under the Historic Preservation Fund, small though it is, comes at the time we begin the observance of the Columbus Quincentennary. NIEA expects to be involved in aspects of the commemoration which focus on the many Indian nations in what is now the United States at the time of Columbus' landing in Cuba.

Of critical importance is that under S. 1579 tribal operation of historic preservation programs would be consistent with the status of tribes as sovereign governments, and the involvement of tribes in our national historic preservation programs would, in all likelihood, increase dramatically. Tribal programs would be able to more adequately serve tribal needs -- needs which cannot be met by state preservation programs.

S. 1579 would also increase tribes' abilities to participate in state historic preservation programs, would require state surveys of historic sites to include areas of importance to tribes and would allow tribes to nominate properties for listing on the National Register of Historic Places and for designation as National Historic Landmarks.

It is vital that tribes have a meaningful opportunity to address concerns regarding properties and natural resources on non-reservation lands. Tribes today control only three percent of their aboriginal territory but still maintain historical, cultural and religious interests in lands and natural resources outside of current reservation boundaries. State Historic Preservation Officers (SHPOs) can, and should, work with tribes to accommodate and protect tribal interests in the operation of state historic preservation programs. Conversely, tribes can, and should, take into account the preservation concerns of the non-Indian citizens of the state when properties on their lands are of importance to non-Indian peoples. S. 1579 would lead to established relationships between state and tribal historic preservation programs which would benefit all parties.

We particularly commend Section 106 of S. 1579 which would require a Federal agency to withhold from public information the location and other information about historic resources "if the agency determines that disclosure may create a significant risk or harm to such resources or may impede the use of a religious site by practitioners." Under current law the confidentiality provision is only required if there is a significant risk to the resource. Tribes are often reluctant, or simply refuse, to share information with the SHPOs or other officials regarding locations of sites of religious significance because the public knowledge of that fact often results in an onslaught of sightseers and/or artifact seekers in an area that requires quiet and/or privacy for religious ceremonies.

State historic preservation programs will be greatly enriched by implementation of the provision in S. 1579 which requirer inclusion of sites of tribal importance in state surveys for National Register of Historic Places-eligible properties. State programs will benefit by more actively including tribes in their programs and by working with tribes as they assume the former SHPO Section 106 responsibilities on Indian lands. The current situation whereby SHPOs are heavily involved in the Section 106 compliance process on Indian lands often causes friction between tribal and state people as tribes resent state-appointed officials carrying out federal responsibilities on their lands. The establishment of tribal historic preservation programs, including the taking over of the Section 106 process by tribes on Indian lands would relieve this tension. Our understanding is that the National Conference of State Historic Preservation Officers concurs with the provisions of S. 1579 concerning the establishment and responsibilities of tribal preservation programs, and so we would anticipate a smooth transition in transfer of these duties.

Once established, tribal historic preservation programs, will be concerned not only with the Section 106 process and making nominations for the National Register of Historic Places, but will also address intangible cultural concerns. The current statutory authority for grants to tribes under the National Historic Preservation Act states that the grants are for "the preservation of their cultural heritage". Recent meetings between the National Park Service (NPS) and tribes regarding the FY1990 historic preservation grant monies for tribes ($500,000) and the NPS's upcoming report to Congress on tribal historic preservation needs clearly indicate that tribes will want as part of their programs a variety of educational components. Some aspects of tribal historic preservation programs will concern Native language retention, tribal-specific school curricula, museum needs and development of and training in tribal preservation laws. We understand that the NPS has received approximately 200 tribal applications for the small sum of $500,000 available in

FY1990 for tribal historic preservation programs. This is an astounding response in light of the fact that FY1990 is the first time funds have ever been appropriated to tribes for historic preservation purposes.

The National Indian Education Association sees an important relationship between the tribal historic preservation programs and effective education. The knowledge of one's tribal history, the acknowledgement and understanding of those outside the tribe of tribal contributions (historic and contemporary) and of access to lands and natural resources necessary for cultural survival, are all essential to the self-esteem necessary to succeed in the Indian and non-Indian world. NIEA is very supportive of Title V of S. 1579 which requires education and training components in preservation programs, authorizes assistance to tribal and other colleges with large numbers of Indian students for historic preservation degree programs and develops model curricula.

There are two areas of the bill with which we are concerned. First and foremost of our concerns is Section 120 entitled "Human Remains and Associated Grave Goods". While we appreciate that the author of the bill tried in good faith to develop language acceptable to all parties on the matter of protection of burial sites and reburial of Indian remains and funerary objects, the language does not accomplish this goal. Despite the assertion in the January 1990 Society for American Archaeology Bulletin to the contrary, no tribal consensus was ever reached on this section of the bill concerning Indian remains and grave goods. The Subcommittee will be hearing from the Native American Rights Fund who strongly contest the assertion that they were part of a consensus on Section 120 of S. 1579.

Indian tribes and organizations have been working independently of S. 1579 for over a year on various other bills addressing not only protection of burial sites and reburial of recently excavated remains, but also on repatriation to tribes of human remains and funerary objects currently housed in museums, universities and state historical societies. NIEA would like to see Section 120 of an otherwise good bill deleted, and for the critical issue of return of our ancestors and their grave offerings to be addressed in separate legislation. This is not an issue on which there is likely to be a "compromise" on which all parties can agree. We believe strongly, and a great many people in Indian country believe strongly, that no human remains or grave goods should be excavated, housed and/or subjected to studies in museums and other academic institutions without express tribal consent. We concur with the statement being submitted by the Native American Rights Fund which will ask for deletion of Section 120.

Our second concern is with Section 301 which provides that the Secretary of Interior will approve or disapprove tribal historic preservation plans in consultation with the appropriate SHPO, the Advisory Council on Historic Preservation, other Indian tribes, local governments, federal agencies and the public. We believe this is somewhat heavy-handed. While none of these entities have a veto power over the tribal program, no such cadre of consultants is called in when the state submits a plan for its program. States are required to involve tribes in their program, but there is no long listing of parties to be consulted. Obviously any program -- state or tribal -- benefits from talking with all interested parties, but we are not comfortable with the language regarding approval of tribal plans, especially since the state plans are not submitted to others for comment.

Thank you for your consideration of our comments. Should this subcommittee schedule a markup of S. 1579, we would like an opportunity to work with your staff on several specific language changes to S. 1579.

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Statement for the
National Parks and Public Lands Subcommittee
of the
House Committee on Interior and Insular Affairs
Budget Oversight Hearing on the

FY1991 National Park Service Budget

February 8, 1990

by
Hobbs, Straus, Dean & Wilder

on behalf of

Three Affiliated Tribes of the Fort Berthold Reservation (Mandan, Hidatsa, Arikara)

Miccosukee Tribe of Indians of Florida

Metlakatla Indian Community

This statement is submitted on behalf of three of our tribal our clients, the Three Affiliated Tribes of the Fort Berthold Reservation of North Dakota (Mandan, Hidatsa and Arikara), the Miccosukee Tribe of Indians of Florida, and the Metlakatla Indian Community of the Annette Islands Reserve, Alaska. We limit our comments to two matters within the National Park Service budget -- issues of concern to our tribal clients and to other federally recognized Indian Tribes in the United States.

First, we address the matter of grants to Tribes under the National Historic Preservation Act for the preservation of their cultural heritage. We address this matter in terms of how important it is that Indian Tribes be included as partners in our national historic preservation program, the wide range of activities that could be included within tribal historic preservation programs, and the level of funding that we believe should be appropriated. We recommend that the level of funding be at least $5 million each year and that the Park Service be provided administrative funds for the program. The second matter we address is the need for ethnographic studies on lands administered by the National Park Service for which we propose $1 million.

BACKGROUND

The 1980 amendments to the National Historic Preservation Act of 1966 (NHPA) enacted two important provisions relating to Indian Tribes. First, § 2 of the NHPA, the declaration of policy, now lists Indian Tribes among the entities which are to be included in a partnership for carrying out the federal historic preservation program. 16 U.S.C. § 470-1. Second, the NHPA now authorizes the Secretary of the Interior to make grants to Indian Tribes "for the preservation of their cultural heritage." 16 U.S.C.§ 470a(d)(3)(B). The FY1990 budget for the Department of the Interior, which includes $500,000 for grants to Tribes from the Historic Preservation Fund, the same source of funds from which grants are made on a recurrent basis to help fund the operations of the State Historic Preservation Officers (SHPOs), marked the first time that funds have actually been appropriated for tribal historic preservation purposes. The National Park Service has solicited applications from Tribes for these grants, and will soon be faced with the task of selecting a small number of applications to fund from among the large number of applications it expects to receive.

We are encouraged that Congress has finally started the process of bringing Indian Tribes into the partnership for carrying out our national historic preservation program. However, the initial appropriation of $500,000 must be regarded as only a beginning. Through the more than two decades in which the States have received historic preservation grants, the funding needs of Indian Tribes for historic preservation have been almost entirely neglected. If Indian Tribes are to become real partners in this program, as we believe they must, the level of appropriations for grants to Tribes must be substantially increased and must be provided on a recurrent basis.

We are encouraged that the message of the Tribes seems to be having an impact with regard to historic preservation. Last year, the National Conference of State Historic Preservation Officers testified in favor of funding for tribal governments under the NHPA, and that organization has also gone to great lengths to include Tribes in their legislative efforts to revise the National Historic Preservation Act. In addition, the Secretary of Interior's 20th Anniversary Report on the National Historic Preservation Act (1986), at 34-35, says that Tribes should be given the option of operating their own programs under the Act. Finally we are encouraged by the fact that the the Administration's proposed FY1991 budget requests $750,000 in funding for tribal historic preservation programs. The amount of funding requested is totally insufficient, but it is a glimmer of light.

The FY1990 Interior Appropriations Act also requires the NPS to report to Congress by March, 1990 on tribal historic preservation needs, and further requires that the NPS consult directly with Tribes in developing the report. We compliment the National Park Service for its efforts in working with Tribes to assess their historic preservation needs and on administering the FY1990 tribal grants. Despite the short time frame, the NPS has done several mailings to Tribes and tribal organizations, has conducted two meetings with Tribes and has made innumerable phone calls regarding the report and the grants.

THE IMPORTANCE OF TRIBAL INVOLVEMENT IN OUR NATIONAL HISTORIC PRESERVATION PROGRAM

Indian Tribes are different from other ethnic groups in the United States in two fundamental ways. First, in contrast with all other ethnic groups in the present day United States, whose cultural roots reach back to other lands, the cultural traditions of Indian Tribes have their roots here in North America. The traditional material cultures of Indian Tribes were quite literally part of the natural environments in which they lived. This can readily be seen from the ways in which Indian people provided for their sustenance needs, the tools and clothing and shelters that they made, and the ways in which they ornamented their material possessions. The non-material aspects of tribal cultures -- religious belief systems and ceremonial practices, oral history and folklore, and even languages -- are also closely tied to the natural world.

As we enter the last decade of the Twentieth Century, the society at large should bear some responsibility for helping to preserve these indigenous cultural traditions. Such responsibility is appropriate because the cultural disintegration that exists today in many Indian communities is largely a result of the westward expansion of the United States and the federal policies that followed expansion, policies which were intended to force (or, in the benign era of the Indian Reorganization Act of 1934, not to force but rather to encourage) Indian people to become assimilated into the dominant American society. (The assimilationist thrust of federal policy was finally abandoned in the 1970's, when the current policy of "self-determination" came into favor in both the Executive Branch and the Congress.)

Looking to the future as well as to the past, the larger society should want to help the Tribes preserve their cultural heritage because, in the context of the environmental crises the world faces today, the larger society may be able to learn something of practical value from these tribal cultures which have evolved in a close relationship with the natural world. Ultimately however, the Congress must remember that tribal cultures are living cultures that cannot be preserved except in the context of the communities that carry them on. The larger society can and should help, but the responsibility for the preservation of tribal cultural traditions must ultimately be borne by the Tribes themselves.

The other fundamental way in which Indian Tribes are different from other ethnic groups in the United States is that Indian Tribes are units of government whose sovereignty predates that of the United States. The governmental authority of Indian Tribes has been limited by treaties, by acts of Congress, and, in certain limited instances, by necessary implication from their dependent status. Except for such specific limitations, Indian Tribes possess the full range of governmental authority that is inherent in the concept of sovereignty. Indian Tribes may also exercise powers delegated to them from the Federal Government and, with federal approval, from the States. As sovereign entities, Tribes are distinct from both the Federal Government and the States. Within the boundaries of Indian reservations, tribal governments are increasingly functioning as the primary governmental authority, as the roles of federal agencies have become more secondary in nature. State governments have only limited governmental authority within

Indian reservations, especially with regard to Indian people and Indian lands.

In keeping with the principles of tribal sovereignty, if the Tribes are to become real partners in our national historic preservation program, as the NHPA declares to be the federal policy, Tribes need to have the option to decide for themselves whether or not they want to perform the lead role in the administration of the federal historic preservation program on lands within their territorial jurisdiction. As a practical matter, this means having appropriately qualified tribal staff to identify properties within tribal jurisdiction that appear to be eligible for listing on the National Register of Historic Places, to plan and implement appropriate measures to preserve such properties, and to participate in the consultation process established pursuant to $ 106 of the NHPA (and 36 CFR Part 800) for protecting such properties from damage or destruction as a result of actions taken, or assistance provided, by federal agencies. The fact that the SHPOs have been given such a major role in the $ 106 consultation process has contributed to friction between Tribes and SHPOs, and the proper way to alleviate such friction, the only way that is consistent with tribal sovereignty, is to offer Tribes the option of performing the role of the SHPO within Indian reservations.

We must note, however, that it is not enough to provide this option for Tribes, even if the level of appropriations is increased such that the option is truly available to those Tribes that want to exercise it. Tribal programs that are operated parallel to State programs will not be enough to serve the broader national interest in historic preservation unless there is genuine coordination and cooperation among Tribal and State programs. Tribes in the United States today have governmental jurisdiction over only 3 percent of the land in this country, yet they maintain interest in, and indeed are vitally affected by, lands and other natural resources outside of their reservation boundaries. Tribes have both historic and contemporary interests in knowing about, protecting, interpreting,and having access to properties that are outside their reservations, and the SHPOs can perform a key role in preserving such properties and assuring tribal access to them. Similarly, Tribes could provide for the protection of historic properties within their reservations that, although not of great significance in tribal history, may be significant in state or regional history.

The virtual exclusion of Indian Tribes from the nation's historic preservation program has been a loss not just to Indian and Alaska Native people, but to all Americans. All of the land which is currently within the United States is the aboriginal territory of American Indian and Alaska Native peoples. For Native peoples, the failure to preserve culturally significant properties and make them accessible for Native use results in the weakening of tribal cultural traditions and threatens the ability of Native peoples to preserve their self-defined identities. The general public's relative lack of knowledge about Indian history and contemporary Indian societies is an intangible loss which contributes to misunderstandings between Indian peoples and their non-Indian neighbors. All Americans would benefit from a national historic preservation program in which tribal and state programs work together.

THE SCOPE OF HISTORIC PRESERVATION GRANTS TO TRIBES

The statutory language that authorizes grants to Tribes states that such grants may be made "for the preservation of their cultural heritage." Cultural heritage is a very broad concept, and, accordingly, this language appears to authorize a broad range of activities within the tribal grants program. The NPS has adopted such a broad interpretation in its guidance to Tribes, and we commend the NPS for taking this approach.

Some Tribes with relatively large reservations and well-established governmental institutions could make the emphasis of a grant the development and implementation of a tribal law for the protection of historic properties, with the intention of replacing the SHPO within reservation boundaries. The Three Affiliated Tribes intends to apply for a grant for just this purpose. Furthermore, the SHPO for North Dakota, by letter dated March 28, 1989, has already given its concurrence to the Tribe's intention to perform the functions of the SHPO in the § 106 consultation process.

For other Tribes, the § 106 process may be of less concern, but they may still be quite interested in preserving historic properties. For example, the Metlakatla Indian Community received funding from the Economic Development Administration for the renovation of a historic building, the former home of Mr. William Duncan, for use as a museum, a project that was completed in 1974. The Duncan home is of historical significance to the Community because Mr. Duncan played a leading role in establishing the Community on the Annette Islands in 1887. The Community provides the operating expenses for the museum from its own funds, with some assistance from the State of Alaska. There are a number of other historic buildings that the Community would also like to preserve and renovate.

Still other Tribes may be more interested in preserving their non-material culture, especially their language and oral tradition. Many of the tribal representatives at the NPS consultation meetings spoke of the importance of preserving language. All three of the tribal clients whom we represent in this testimony are concerned about the preservation of their tribal languages.

RECOMMENDED LEVEL OF APPROPRIATIONS FOR TRIBAL HISTORIC PRESERVATION PROGRAMS

There are more than 500 federally recognized Indian Tribes in the United States, including Alaska Native villages. We are not asking for a level of appropriations that would be sufficient so that every Tribe could receive funding for a tribal historic preservation program. We cannot state too strongly that the preservation of its cultural heritage is a matter of vital importance for virtually every Indian Tribe in the United States. (More than 75 Tribes sent representatives to the two consultation meetings which the NPS held in January 1990 and many others have communicated via telephone and/or letter.) Tribes have been struggling to preserve their cultures against formidable odds for generations. Indeed, it is largely because of their perseverance that the number of Tribes in existence today is as high as it is.

However, if Tribes are to become real partners in our national historic preservation program, they need to be able to hire staff to interact with state and federal agencies and to perform at least some of the functions within their reservations that the SHPOs perform in their States. If our nation as a whole is to realize the benefits that could flow from the partnership of Tribes in the historic preservation program, the appropriations for tribal program grants must be more than a token level and must be provided on a recurrent basis. We recommend that in both FY1991 and FY1992, the level of appropriations for tribal programs be at least $5 million, and that this level be gradually increased in subsequent years. Furthermore, we ask that the appropriations for tribal programs not be simply deducted from funds that would otherwise have been appropriated for State programs. Our national historic preservation program needs to build cooperative working relationships between Tribes and States, and to make it appear that tribal programs are in competition with State programs for the same funds would be counterproductive.

We note that the NPS is administering the Tribal grant program in FY1990 without the benefit of any administrative monies. We ask that, in addition to $5 million for tribal historic preservation grants under the NHPA, an appropriate amount of funding for NPS administration of the Tribal grant program be appropriated.

ETHNOGRAPHIC STUDIES

Virtually none of the NPS's financial resources are used for ethnography, and this situation should be reversed. Only a handful of parks have had ethnographic studies even though such studies would serve the Park Service's legal mandates and public policy objectives. Our federal cultural parks were established for the express purpose of interpreting Indian history. In addition, the American Indian Religious Freedom Act, Archaeological Resources Protection Act, National Historic Preservation Act, National Environmental Policy Act and the Park Service's "Native American Relationships Policy" provide for ongoing consultative relationships with Tribes regarding actions which may affect resources of significance to Tribes. The general purposes of such consultative relationships with Tribes is to avoid, or at least mitigate, any adverse impacts on resources that are important to Tribes which could result from NPS action or from activities which the NPS permits. If ethnographic studies are conducted properly -- by teams of cultural anthropologists and Native people -- we will have a foundation from which to carry out these legal and policy mandates.

The establishment of an ethnographic data base would give us better understandings of the history of park lands and resources, would tell us what resources need to be protected and the most appropriate ways to provide that protection. They would also clarify the relationships of contemporary peoples to the parks. The NPS must know how living people who are traditional users of the park resources use and/or need access to those resources. For Native peoples, continued relationship with certain lands and natural resources is at the heart of their ability to continue as tribal people.

The need for an ethnographic data base for lands administered by the NPS is demonstrated by the example of the Big Cypress National Preserve (the Preserve) in southern Florida. The Preserve was established by an act of Congress in 1974, primarily for the purpose of preserving the natural environment of the lands and wetlands which comprise a major portion of the watershed of Everglades National Park. However, Congress also recognized that Miccosukee and Seminole Indians had been living for many generations in the area that was to become the Preserve and that their tribal cultures depended upon the use of the area and its renewable natural resources. Accordingly, the statute that authorized the establishment of the Preserve specifically provides that:

> "members of the Miccosukee Tribe of Indians of Florida and members of the Seminole Tribe of Florida shall be permitted, subject to reasonable regulations established by the Secretary, to continue their usual and customary use and occupancy of Federal or federally acquired lands and waters within the preserve, including hunting, fishing and trapping on a subsistence basis and traditional tribal ceremonies." 16 U.S.C. § 698j.

In May 1988, the NPS published proposed rules to regulate Indian use and occupancy within the Preserve. Our firm has represented both the Miccosukee Tribe and the Seminole Tribe in the matter of these proposed rules. We submitted comments on the proposed rules in which both Tribes stated that they were not opposed to the establishment of reasonable regulations if a genuine need to regulate Indian use and occupancy could be shown, and both Tribes offered to become directly involved in the administration of such regulations. Our comments also stated that we did not believe the rules as proposed were reasonable, in part because they were based on inadequate information. We argued that the proposed rules were fundamentally flawed in that they would have prohibited certain kinds of practices which the Tribes believe are included within the scope of "their usual and customary use and occupancy" and therefore are statutorily protected. We recommended that the NPS conduct an ethnographic study to determine the range of cultural and economic activities that should be considered to be "usual and customary use and occupancy."

Through negotiations with the NPS it became apparent that the NPS did not have an ethnographic data base that was adequate for the development of reasonable regulations, and the NPS did agree to conduct an ethnographic study. The scope of work for the study has been designed in consultation with both Tribes, and the study itself will soon commence. As a result of the inadequacy of the data base, it will be some time yet before there are rules in effect to regulate Indian use and occupancy of the Preserve, but, when the rules are finally promulgated, we anticipate that they will be acceptable to both Tribes. More importantly, the experience of conducting an ethnographic study in consultation with both Tribes will help the NPS to build a better working relationship with both Tribes. This will, in turn, serve the common interests of the NPS and the Tribes in protecting the environment of the Preserve.

We note that the proposed FY1991 National Park Service budget contains $156 million for the America the Beautiful initiative, an initiative designed to improve and expand the federal government's public land resources and facilities. This is an increase of $31 million over the FY1990 funding level for these activities. We strongly urge that Congress provide in appropriations and report language that the America the Beautiful effort is to enhance the cultural resources of the parks, including very specifically additional ethnographic work. We recommend a $1 million earmarking of America the Beautiful funds for ethnographic studies.

NATIONAL INDIAN EDUCATION ASSOCIATION

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89-17

RESOLUTION OF THE
NATIONAL INDIAN EDUCATION ASSOCIATION

Supporting Legislation to Authorize Establishment of Tribal Historic Preservation Programs and to Include Tribes in the Protection of Historic Places on Non-Indian Lands

1. WHEREAS: This Nation's historic preservation program as implemented through the National Historic Preservation Act has essentially excluded the interests and participation of Indian and Alaska Native people; and

2. WHEREAS: Funding under the National Historic Preservation Act has gone exclusively to state historic preservation programs, even though authority exists to provide grants to tribes; and

3. WHEREAS: Tribal governments, unlike state governments, have not been afforded the financial resouces with which to develop historic preservation programs; and

4. WHEREAS: The knowledge and protection of places and sites of historic interest, including those of religious significance, are an important part of the education and survival of Native people; and

5. WHEREAS: State historic preservation programs generally have not involved Indian and Alaskan Native people, and do not, therefore, make adequate provisions for protection of sites and places of significance to Indian and Alaska Native people nor adequately interpret Indian and Alaska Native histories;

NOW THEREFORE BE IT RESOLVED THAT:

1. The National Indian Education Association commends Senator Wyche Fowler for his work with Indian organizations on the development of S. 1579, the National Historic Preservation Policy Act, and for his successful effort to provide $500,000 in FY1990 monies for tribal historic preservation programs.

2. BE IT FURTHER RESOLVED THAT the National Indian Education Association specifically supports the following provisions of S. 1579: a) the establishment and funding of tribal historic preservation programs, b) the involvement of tribes in state historic preservation programs so that tribal interests can be taken into account in those programs, c) the taking over by tribes of federal responsibilities for issuing permits for archaeological work on tribal lands and d) the inclusion of

tribal colleges and other higher education institutions with large numbers of Indian students as eligible recipients of funds to provide training in historic preservation fields.

** CERTIFICATION **

I hereby certify that the foregoing resolution was duly considered by by the National Indian Education Association assembled at its annual convention in Anchorage, Alaska, at which a quorum was present and that same was passed by a vote of ___ in favor and _0_ opposed, this _11_ day of October 1989.

President, National Indian Education Association

November 6, 1989

Dr. Robert Swan Date

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January 12, 1990

GENERAL MEMORANDUM NO. 90-4

RE: Tribal Provisions in National Historic
Preservation Policy Act, S. 1579/H.R. 3412

Legislation has been introduced in the Senate and House which would make major changes in the nation's historic preservation program and which would significantly increase tribal authorities under historic preservation laws. The legislation is largely the product of several years of work by the National Conference of State Historic Preservation Officers and reflects considerable input by tribes and tribal organizations.

Major tribal provisions in S. 1579/H.R. 3412 include:

-- Authority under the National Historic Preservation Act (NHPA) for tribal historic preservation programs and funding for those programs. Tribes could use federal funds to match the NHPA monies, while states are required to match NHPA funds with non-federal monies.

-- Expansion of the National Register of Historic Places to include properties of importance to tribes, including landscapes and properties designated as National Historic Landmarks. Tribal Historic Preservation Offices would be authorized to nominate properties for the Historic Register and for Historic Landmark designation.

-- New statutory requirements for consultation by federal agencies and State Historic Preservation Officers with tribes on protection of properties of significance to tribes.

-- Deletion of human remains found on federal lands from the definition of "archaeological resources" under the Archaeological Resources Protection Act of 1979 (ARPA). The legal authority often relied on by federal agencies to store Indian human remains in universities, museums and other academic institutions, instead of following tribal wishes on the disposition of human remains, depends in part on the inclusion of human remains in the definition of archaeological resources.

Senate Wyche Fowler (D-Ga.) introduced S. 1579, the National Historic Preservation Policy Act of 1989 on August 4, 1989. THe bill has been referred to the Committee on Energy and Natural Resources. An identical bill, H.R. 3412, was introduced by Representatives Charles Bennett (D-Fla.), Sam Gjendensen (D-Conn.) and George Brown (D-Calif.) on October 5, 1989 and referred to the Committee on Interior and Insular Affairs. No hearings have been held on either bill, although tentative plans call for hearings this Spring.

Background: Federal involvement and funding for historic preservation programs come mainly from the authorities of the National Historic Preservation Act (NHPA) of 1966. Under NHPA, funding is provided to state historic preservation programs on a recurrent basis ($26.5 million in FY1990). State programs are required to meet criteria specified in the law. Under the NHPA, each state has a State Historic Preservation Officer (SHPO) appointed by the Governor. The state program is required to include preservation efforts on all lands within the State boundary (including Indian lands), with the SHPO as the administering agent. Historic preservation programs have generally focused on the built environment. While this can be of importance to tribes, the state programs often ignore or underemphasize preservation efforts which would protect and make accessible to tribes natural areas considered important to tribal people. The preservation of non-material culture has also been neglected.

The NHPA was amended in 1980 to allow direct grants to tribes "for the preservation of their cultural heritage." However, no monies under the NHPA had been appropriated for tribal governments until FY1990. Tribes and tribal organizations have been advocating for several years for direct NHPA funding to tribes, and in FY1990 $500,000 was appropriated for this purpose. This modest amount of money is the result of an amendment offered by Senator Wyche Fowler to the FY1990 Interior Appropriations bill. See our General Memorandum No. 89-99 for information on the distribution of these monies.

Currently the NHPA makes only three references to tribes: (1) Section 2, as amended, states that Indian tribes are to be included in a partnership to carry out the policy of the NHPA, (2) section 101(d)(3)(B) authorizes the Secretary of the Interior to make grants to Indian tribes, and (3) Section 301(4) defines "Indian tribe" for purposes of the NHPA.

In 1986, revised regulations to Section 106 of the NHPA were published which provide guidance on tribal participation under that Act. Section 106, as described by Advisory Council on Historic Preservation, "requires Federal agencies to take into account the effects of their undertaking on historic properties, and to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings." The 1986 regulations issued by the Advisory Council on Historic Preservation encourage the Council and SHPOs to "be sensitive to the special concerns of Indian tribes in historic preservation issues, which often extend beyond Indian lands to other historic properties." 36 C.F.R. § 800.1(c)(2)(iii). Federal agencies undertaking projects likely to affect historic properties are required by regulation to "seek information in accordance with agency planning processes from ... Indian tribes ... likely to have knowledge of or concerns with historic properties in the areas." 36 C.F.R. § 800.4(a)(1)(iii). When federal projects are on Indian lands, regulations require that the federal agency responsible for the undertaking "invite the governing body of the responsible tribe to be a consulting party and to concur in any agreement concerning measures to avoid or mitigate the effect on the property." 36 C.F.R. § 800(c)(2)(iii). Federal agencies "shall, to the extent feasible, carry out responsibilities under these regulations consistent with such procedures." 36 C.F.R. § 800(c)(2)(iii).

The 1986 regulations also provide that a tribe can assume all or part of the historic preservation duties of the SHPO on Indian lands "provided the Indian tribe so requests, the SHPO concurs (emphasis added) and the Council [Advisory Council on Historic Preservation] finds that the Indian tribe's procedures meet the purposes of the regulations." 36 C.F.R. § 800.1(c)(2)(iii). No tribe has yet assumed the historic preservation duties of the SHPO pursuant to the 1986 regulations.

Finally, the 1986 regulations provide that Native Americans (in addition to tribal governments) may be considered "interested parties" and thus eligible to participate in deliberations on historic preservation matters. Specifically included as interested parties under the regulations are "traditional cultural leaders" who are defined in the guidelines accompanying the regulations as meaning "an individual in a Native American group or other social or ethnic group who is recognized by members of the group as expert on the group's traditional history and cultural practices." Only a tribal government, however, may be a signatory to a Memorandum of Agreement or Programmatic Agreement under the NHPA.

Another important federal statute which establishes part of the legal framework for the management and protection of cultural resources on federal lands and Indian lands is the ARPA. While the pending legislation is mainly concerned with amending the NHPA, it would also amend ARPA in several important ways.

TRIBAL PROVISIONS OF S. 1579/H.R. 3214

Findings. While the NHPA as currently enacted includes no mention of tribes in the Findings section, the pending legislation references Indian tribes three times in its Findings (Section 2). The Findings section acknowledges the importance of tribal historic properties and calls for compensation to Indian tribes for carrying out delegated federal historic preservation responsibilities.

Policy. Section 3 of the legislation would amend the NHPA to say it is the policy of the U.S. to cooperate with Indian tribes "for carrying out Federal preservation responsibilities pursuant to this Act." The policy section of NHPA as currently enacted only calls for cooperation with state and local governments.

Federal Historic Preservation Responsibilities vis-a-vis Tribes. Title I of the legislation, which is designed to strengthen federal protection for historic properties, would place new requirements on agencies to consult with tribes and add new tribal authorities. A number of provisions in Title I are of particular importance to tribes:

-- Identification of Historic Properties. Section 101 would require federal agencies to "act affirmatively" to identify significant historic properties under their control and includes properties eligible for National Historic Landmark designation in addition to the current law's inclusion of potential National Register properties. These provisions would allow tribes the opportunity to work with federal agencies in identifying sites and areas of importance to them on federal lands.

-- Consultation with Tribes. Federal agencies would be directed in Section 102 to consult "during the earliest feasible planning phase" with Tribal Historic Preservation Officers and others on any federal undertaking that may affect historic properties. This compares with Section 106 in the current NHPA which requires federal agencies to take into account their actions only prior to the issuance of permits or the expenditures of federal monies. Section 114 of the legislation also would amend ARPA to require that when a requested permit to excavate archaeological resources may affect "any property of cultural importance to an Indian tribe or other Native American group, or the traditional religious practices of such a group, the Federal authority shall ensure that the potentially affected group is notified and consulted to resolve any objection it may have to the action proposed, and shall take any such objection into account in making a final decision." The provision in the pending legislation would go somewhat further than the existing language of ARPA, which requires notice to tribes in such cases, but does not require consultation (although the ARPA regulations do require federal land managers to meet with any tribe that responds to such a notice).

-- Delegation of Responsibilities to Tribes. Federal agencies would be authorized under Section 105 to delegate federal preservation responsibilities and funding to Tribal Preservation Officers. The Advisory Council on Historic Preservation would have to approve any such agreement. Section 114 of the legislation would amend ARPA to allow for tribal permits concerning excavation and removal of archaeological resources to be substituted for a federal permit if the tribe so requests and if the Advisory Council on Historic Preservation determines that the tribal ordinance and permit procedures are consistent with and provide protection substantially equal to, those provided by the Act.

-- Confidentiality. Section 106 would require a Federal agency to withhold from public information the location and other information about historic resources "if the agency determines that disclosure may create a significant risk or harm to such resources or may impede the use of a religious site by practitioners." The requirement to withhold information was originally enacted in 1980. One significant aspect of the pending legislation is that it would add the language intended to protect religious practitioners from disturbance.

-- Expansion of National Register of Historic Places. Section 109 of the legislation would require the Secretary of the Interior to expand and maintain the National Register of Historic Places by, among other things, including sites of tribal significance. Tribal Historic Preservation Officers would be authorized to nominate properties for inclusion on the National Register. Nominations would be deemed approved within 45 days of receipt unless disapproved by the Secretary or appealed by an individual or organization. Section 110 would amend the Historic Sites Act of 1935 to require the Secretary of the Interior to expand and maintain the list of National Historic Landmarks and to authorize Tribal Historic Preservation Officers to nominate properties for designation as National Historic Landmarks.

-- Properties of "Critical" Importance. Section 111 would establish a category of historic properties which are considered to be of "critical importance" and would authorize legal actions for their protection. The Advisory Council on Historic Preservation would develop, in coordination with Tribal Historic Preservation Offices and others, criteria for properties of critical importance and for the identification of such properties which face significant threats. The Advisory Council would be authorized to issue notices requesting that federal assistance be suspended to any project which may threaten the property. The Advisory Council could also seek court injunctions to stop action which may threaten a critical historic property.

-- Federal/Indian Land Manager Authorities. Section 113 would amend the ARPA to provide that in cases where both a federal land manager and an Indian land manager have authority on Indian lands, the Indian land manager shall have primary managerial authority for purposes of the ARPA and NHPA. The Federal land manager would, however, remain subject to the requirements of those Acts.

-- Penalties. Section 115 would amend ARPA by adding violations of tribal law to the current prohibition on violating federal, state and local law regarding disturbance and transfer of archaeological resources. Penalties for violating laws relating to archaeological resources would be increased, and fines collected for violation of archaeological resources on Indian lands would be paid to the appropriate tribe or Indian landowner. Fines collected for violations on non-Indian lands would be used for restoration, repair, return, stabilization, research and interpretation of the archaeological resources and for the disposition of any human remains which were disturbed.

-- Human Remains/Grave Goods. Section 120 would add a new section to the ARPA requiring that each federal agency, tribe, state and local historic preservation program receiving assistance under ARPA or NHPA be required to adopt policies and procedures for the protection and disposition of human remains and associated grave goods that may be disturbed by natural or other causes. Agencies not adopting standards would be required to adopt those developed by the Advisory Council on Historic Preservation. Section 120 has as its premise that graves generally should not be disturbed, or if they are, that the wishes of the descendants (broadly defined) regarding the disposition of the human remains and grave offerings should be followed. There are exceptions to this, however. The policy in the pending legislation would not apply to current collections of human remains and grave offerings and is not as comprehensive or as straightforward as some other pending bills on this subject. (See our General Memoranda Nos. 89-47 and 89-93. Since those Memoranda were written, additional legislation on repatriation of human remains/grave offerings has been introduced.) There has been some suggestion from Senator Fowler's office that Section 120 of the bill may be dropped.

Section 120 of the National Historic Preservation Policy Act would provide the following guiding principles for policies on human remains and grave goods: (1) human remains and grave goods should not be disturbed on any lands unless it is necessary to protect them from imminent destruction, essential for a criminal investigation, necessary to mitigate effects of construction or other factors, necessary for the recovery of a shipwreck, or essential for research permitted by a state, tribal or federal agency; (2) human remains and grave goods should be subject to study unless the descendants of the deceased persons object. Where there are no living descendants, a commission is to make the decision regarding analysis and disposition. The decision is to balance the interest of various interested parties. "Descendants" is defined in the legislation to mean: "a living person or group evidenced by biological archaeological, anthropological, folkloric, historical, or other research to be descended from a historic or prehistoric group of people."

Title II. State Historic Preservation Programs vis-a-vis Indian Tribes. Title II of the legislation would amend the NHPA to direct that state surveys of historic properties include properties of tribal significance. Indian tribes would be added to the list of parties which are to receive advice and assistance from the State Historic Preservation Office in carrying out historic preservation programs. Tribes would also be added to the list of parties with whom SHPOs may enter into contracts or cooperative agreements in carrying out all or part of the state's historic preservation responsibilities. Finally, state historic preservation programs would be required to allow tribal participation.

Title III. Tribal Historic Preservation Programs. Section 301 would amend the NHPA to allow tribes to establish historic preservation programs under that Act. Tribal programs could assume all or part of the functions of the SHPO. Under Section 301 the tribal governing body would appoint a Tribal Historic Preservation Officer (THPO) to carry out historic preservation functions on Indian lands. A plan which describes the functions of the THPO would be submitted to the Secretary of the Interior for his approval. The Secretary would be directed to consult with the appropriate SHPO, the Advisory Council on Historic Preservation, other Indian tribes, local governments, federal agencies, and the public on the tribe's proposed plan. Some SHPO's had advocated that the bill require SHPO approval of a tribe's historic preservation program plan, but that notion was opposed by tribal organizations, and Senator Fowler also rejected the idea.

The Secretary of the Interior would be authorized to delegate federal historic preservation responsibilities on Indian lands to the THPO. If the tribe requests, the Secretary of the Interior also would be authorized to delegate federal historic preservation responsibilities on Indian lands to a state. Section 301 repeats provisions found elsewhere in the legislation that properties of religious and cultural importance to tribes and other Native American groups shall be considered for inclusion on the National Register of Historic Places and that federal agencies are to consult with tribes when projects may affect properties of religious and cultural importance.

Indian tribes would have the right of first refusal on all historic properties under the jurisdiction of the Bureau of Indian Affairs and the Indian Health Service which are leased or transferred under Section 111 of the NHPA. Section 107 of the legislation would require that leased or exchanged historic properties be preserved, and that revenue from such transactions be used to maintain that property or other historic property.

Title V. Education and Training. Title V would strengthen the NHPA regarding historic preservation education and training and makes specific references to tribes and Native students. The primary responsibility for education and training would rest with the Advisory Council on Historic Preservation. Under current law, the Secretary of the Interior is the primary agent in charge of preservation education and training. The Advisory Council would be directed to consult with a number of parties, including tribal organizations, in the development of a comprehensive preservation education and training program. The program would contain new standards and training opportunities for, among others, tribal people. Model curricula would be distributed to schools, and special assistance would be provided to tribal colleges, colleges with high enrollments of American Indian students and historically Black colleges and universities to establish historic preservation degree programs. Programs receiving funding under the NHPA would be required to include education and training as components of their program.

Please let us know if you would like further information or analysis on the National Historic Preservation Policy Act and/or desire any assistance in submitting comments on this legislation. We will keep you informed of the hearing schedule on S. 1579/H.R. 3412.

Sincerely yours,

Hobbs, Straus, Dean & Wilder

HOBBS, STRAUS, DEAN & WILDER

Inquiries concerning this
Memorandum may be directed
to Karen J. Funk or Dean B. Suagee.

Senator **Bumpers**. Thank you.
Mr. Keune.

STATEMENT OF RUSSELL V. KEUNE, CHAIRMAN, HISTORIC RESOURCES COMMITTEE, THE AMERICAN INSTITUTE OF ARCHITECTS

Mr. **Keune**. Thank you, Mr. Chairman. You have the statement of the Institute and I will enter that for the record, if I may, and just speak personally.

I was asked by the Institute to testify on their behalf primarily because of my 30 years experience working in both the public and private preservation programs here in Washington. So I would like, if I may, to speak from that experience to the contents of these bills.

The American Institute of Architects would like to go on record specifically supporting five elements of the proposed legislation: first, the establishment of a national preservation technology center; secondly, the strengthening of the protective provisions of the National Historic Preservation Act; third, the delegation of certain Federal preservation responsibilities to qualified State and local authorities; fourth, the inclusion of Native Americans as a recognized part of the national preservation program; and, fifth, expansion of the Federal Government's role in education and training.

Let me touch briefly, then, on each one. In the realm of the technology center, certainly architects working every day in preservation deal with technology. We believe within our own professional framework we have a good ability to document and share what we are doing, but what is missing is the ability to interact on a regular basis, coordinated nationally, with other professional disciplines.

We believe the center for technology would serve an important and missing need in this regard, and we wholeheartedly support it. I might note that the AIA is about to embark on a major restoration program of the Octagon here in Washington, and we would be happy to have that used as a laboratory for such a technology center.

Secondly, putting some teeth in the Federal protective mechanisms. While Jerry has got a nice smile, I think he might benefit, and Mr. Bush, from some additional denture work. I used to serve as a delegate to the Advisory Council while I was with the National Trust, and I also had the privilege of being involved with the very first section 106 case in the United States, in Las Trompos, New Mexico.

And I would have to observe over the time of this experience with section 106 I draw an important contrast between what the Congress did in inserting section (4)(f) in the act creating the Department of Transportation in 1966 and what they did with section 106. I think when push has come to shove section (4)(f) provisions of the DOT act have been shown to be much stronger than section 106.

Thus, I would strongly support and the Institute strongly supports greatly strengthening section 106 to give it more teeth. It was very frustrating to me, and I think is still very frustrating to many preservationists to watch Federal agencies carefully go through the procedures prescribed by section 106, go through the Advisory Council hearing process, and then end up with what I would categorize as giving the preservation kiss-off to the recommendations and proceeding with their own intended wishes.

Unfortunately, this can still be the case, and I think strengthening of those protective provisions would change that.

The delegation to State and local entities. I think this is the great strength of the American preservation movement, as we have heard earlier today. And I as an individual in the last five years have volunteered my services in Arlington, Virginia, on their local Landmark and Historic District Commission. So after working at the national level for so many years, I have become a consumer of the national programs at the local level, and I can speak, I think with authority, that local entities grow tremendously by the help that has been given by State preservation offices and by the National Park Service and the Advisory Council.

And the delegation of these additional authorities to local governments and to the State preservation offices is highly appropriate.

With regard to the Native Americans, as my colleague here has just testified, I believe this is a long overdue recognition due to the Native Americans for full inclusion in the national historic preservation program.

Recently I have had the experience of working with United States nominations to the World Heritage list for both the Taos and Yakama Pueblos, and we can attest from that experience to the importance and the caring that these tribes are giving to those resources, and they need the additional assistance and support of the full Federal program.

Certainly education and training at the local level are very, very important. My experience, working with members of the local county board, with professional staff members in the county preservation office, with citizen associations, all are in need of additional education and training. I think the important part of what I would emphasize here is that the education and training should not be confined to Federal officials and public officials but needs to reach the private and professional sectors.

I would like to close with just one personal experience that brought home to me the day before yesterday how long and how far we have come in our national preservation program. I had the privilege to meet with a member of President Havel's delegation from Czechoslovakia, who wished to establish contact with American preservation interests. I thought it interestingly ironic that in 1964 and 1965 Members of the Congress and others went to Europe, including Eastern Europe, to look at what was going on in preservation at that time, and here we are, these many years later, having delegations now coming to the United States to ask for the sharing and the benefit of the experience that we have gained here so that they might improve their programs.

Thank you very much.

[The prepared statement of Mr. Keune follows:]

THE AMERICAN INSTITUTE OF ARCHITECTS

STATEMENT OF

RUSSELL V. KEUNE, AIA

REPRESENTING THE AMERICAN INSTITUTE OF ARCHITECTS

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

OF THE

UNITED STATES SENATE

FEBRUARY 22, 1990

1735 NEW YORK AVENUE, N.W. • WASHINGTON, D.C. 20006 • (202) 626-7300 • FACSIMILE (202) 783-8247

Mr. Chairman and members of the subcommittee, my name is Russell Keune, AIA, preservation architect of Arlington, Virginia, and I am testifying before the Subcommittee on behalf of The American Institute of Architects. My experience includes 10 years with the National Park Service where I served as restoration architect and assistant keeper of the National Register, 14 years with the National Trust for Historic Preservation as director of preservation programs and services, and two years of private practice. I am currently in my fourth year at U.S. ICOMOS as vice president for programs. Founded in 1857, the AIA is the national association of the architectural profession, with more than 55,000 members representing 56 percent of our nation's registered architects.

Mr. Chairman, the AIA is grateful for this opportunity provided by you and the Subcommittee to testify on the Historic Preservation Administration Act (S. 1578) and the National Historic Preservation Policy Act (S. 1579). The Institute also expresses its appreciation to Senator Wyche Fowler for introducing these bills and for creating the national forum in which to discuss how our nation can better protect and preserve its rich architectural and cultural heritage in the future.

The AIA is testifying today in support of five major objectives of these bills of specific interest to the architectural profession:

1) the establishment of a National Preservation Technology Center;

2) the strengthening of the protection provisions of the National Historic Preservation Act;

3) codification of the roles of the federal, state, local, and tribal preservation authorities and formal delegation of certain federal responsibilities to the lower authorities;

4) the inclusion of Native Americans as a recognized part of the national preservation program; and

5) the expansion of the federal government's role in education and training.

Historic preservation has long been a high priority of the Institute. As early as 1890 --when our nation was barely 100 years old-- the AIA established a Committee on the Conservation of Public Architecture charging that "The history of civilization and the world is traced by the character of its buildings and architecture, and the degree of civilization of a people is determined by the monuments they have left." This year, what is now called the Committee on Historic Resources celebrated its 100th anniversary. It continues to be one of the largest and most active committees of the Institute and last year I had the honor of serving as chairman of this committee.

The Institute views this proposed legislation as building upon a preservation program that has accomplished much since 1966 when the National Historic Preservation Act was passed. We all share a sense of accomplishment and pride in the many significant achievements which have been made - the growth of the National Register of Historic Places to encompass over 22,000 entries, the creation of state historic preservation offices in all the states and territories, the creation of federal preservation officers, the rapid growth in local landmark and historic district commissions, and the development of national preservation definitions and performance standards --to name but a few. However, we have not yet reached perfection in our national, state, and local preservation programs. There is still room for improvement.

As with all legislation, there are certain aspects of S. 1578 and S. 1579 that may be altered during the legislative process. However, the underlying concepts of increased coordination among the federal preservation authorities, the assimilation and transfer of technology, the delegation of certain responsibilities to state and local authorities, and the expansion of educational initiatives will serve as an excellent springboard for strengthening America's historic preservation policy. The AIA is very much in favor of these proposals and will support the introduced legislation in this regard. For the remainder of my testimony I will discuss some of the proposals of particular interest to architects and the Institute.

NATIONAL CENTER FOR PRESERVATION TECHNOLOGY

The AIA fully supports the objectives of a National Center for Preservation Technology to serve as a clearinghouse for preservation data, research, professional training, technical assistance, and programs for public awareness. In 1986, a report by the Office of Technology Assessment stated that "the lack of adequate (preservation) technology transfer demonstrates a conspicuous need for an institution to coordinate research, disseminate information, and provide training about new technologies."

The AIA views itself as a provider of information to such a center and as a major consumer. While supporting the purposes of such a center, we urge further consideration of its organizational structure and placement. Our experience would suggest that it be closely tied administratively to a major federal preservation program.

No more appropriate demonstration of the need for such a center can be found than in South Carolina and California, where National Register-designated historic neighborhoods are currently struggling to recover from last fall's devastating hurricane and earthquake. The AIA sent special teams of architects into both areas immediately after each disaster. From the initial visits the teams determined that one of the biggest obstacles to recovery is the lack of professionally trained workers to repair damaged buildings, particularly with regard to older building materials and methods.

Great opportunities for important research and the development of new technology will be derived from rebuilding these two very historic, yet diverse, areas of the country. But without a resource depository in place, such as a technology center, how will the data be recorded and stored for future use? We should not have to reinvent the wheel each time such disasters occur.

There can be no doubt that the center would lower reconstruction costs, decrease the amount of time currently needed for research of such projects, increase the number of trained professionals available to deal with these projects, and mitigate further damage of historic sites by untrained workers.

STRENGTHENING OF FEDERAL AGENCY PRESERVATION COMPLIANCE

The record has shown that the "no prudent or feasible" provision of Section 4f of the 1966 Department of Transportation Act has been an important legislative basis for protecting and saving threatened National Register properties. The AIA supports the strengthening of Section 106 by the amendments proposed in Section 103 of this legislation.

CODIFICATION OF FEDERAL, STATE, AND LOCAL ROLES

The AIA supports the provisions of Title II of the National Preservation Policy Act formally acknowledging the roles of the states and state historic preservation programs. This section also allows the delegation of federal authority to the states at the discretion of the Secretary of the Interior and the President's Advisory Council on Historic Preservation. By amending Section 101(b) of the National Historic Preservation Act, this bill basically codifies existing practices that have evolved over the past decade on an informal basis. It also ensures that states are adequately compensated for performing responsibilities delegated by federal preservation authorities.

Title IV gives local governments explicit authority to appeal decisions of the State Historic Preservation Officer. It allows the State Historic Preservation Officers to delegate certain authority to local governments and provides new authority for the Secretary of Interior to extend direct financial and technical assistance to local preservation programs.

By moving certain responsibilities to the lowest level possible, decisions may be made more quickly and efficiently, taking the needs and interests of each individual community into account.

NATIVE AMERICAN TRIBAL HISTORIC PRESERVATION PROGRAM

The AIA enthusiastically supports the provisions of Title III of the proposed bill dealing with tribal protection. It is fitting, timely, and appropriate that a full role be developed for our Native Americans in the national historic preservation program. As the stewards of the oldest of this continent's cultural resources, they have a most important role.

EDUCATION AND TRAINING

Title V (of S. 1579) revises and expands current provisions for preservation education and training, assigning responsibility for developing and implementing this program to the Advisory Council, rather than the Secretary of Interior as under current law. It also establishes a list of consultants to assist the Advisory Council, including various federal, non-federal, and tribal organizations. The AIA supports the purposes and objectives of this provision, but since this program is described as including "dissemination of information on preservation technologies," "provision of training and skill development in trades and crafts related to historic preservation," and "support for analysis, curation, interpretation, and display related to historic preservation," the Institute feels very strongly that the AIA or a licensed architect should be specified on this list of consultants. Ideally, the AIA would prefer this architect to be a member of the AIA's Committee on Historic Resources, in view of that committee's 100 years of protecting America's architectural heritage.

THE ROLE OF PROFESSIONS AND THEIR ASSOCIATIONS

Historically, the professions of archeology, architecture, and history have been our national historic preservation program. However, with the tremendous growth in the preservation ethic since 1966, many other professions have come to play important roles in the movement - planners, lawyers, landscape architects, interior designers, realtors, etc. The proposed legislation contains references to the roles and needs of the archeology profession in historic preservation. We would note that many of the professional needs articulated for archeology could also be made, just as forcefully, for most of these other professions. We urge further review of these aspects of the legislation. As a national professional organization, we strongly believe that it is incumbent upon such associations to develop and maintain standards of professional definition and practice. We do not feel this is a role for the federal government.

ESTABLISHMENT OF AN INDEPENDENT AGENCY

S. 1578 calls for the consolidation of all federal historic preservation authorities into one independent Historic Preservation Administration. For many years the AIA has enjoyed a good, strong relationship with the National Park Service, although we acknowledge that problems have been encountered in national administration of the program during the past 12 years. However, the solution to these problems may not necessarily be in creating a separate agency, but in re-addressing the original organic act of 1916 that created the National Park Service and amending it to strengthen the Park Service's own organizational mandate toward historic preservation. The AIA feels confident that through further examination and discussion, an agreement may be reached to the satisfaction of all involved and interested parties.

SUMMARY

In summation, the AIA hails this legislation as an exceptional effort in continuing the hard-won progress of the past 24 years. The AIA's recently completed Vision 2000 report states that 90 percent of the architecture that our profession will be dealing with in the 21st century already exists today. Therefore it is imperative that the proper administrative bodies and protection provisions be in place as we enter the final decade of the 20th century. By promoting research, education and training, by strengthening our current laws, by involving state and local authorities in preservation decisions, by including Native Americans in our preservation programs, and by recognizing the importance of professionals and their contributions to preservation, our nation's rich cultural and historic heritage will be safely preserved for future generations.

Again we thank the Subcommittee for this opportunity and hope that you will call upon the AIA if we may be of further assistance to you in your examination of this legislation.

Senator BUMPERS. Are you going to the big bash tonight?

Mr. KEUNE. No. I am sorry I did not rate a ticket.

Senator BUMPERS. Well, I had one and gave it away. I wish I had known you did not have a ticket.

I would just comment on your mentioning President Havel. You know, the Soviet Union spends a lot more on preserving their culture, including their cathedrals and their churches, than we do. It is a curious thing about a society like that, supposed to be indifferent to human values and so on, that they do make such a monumental effort to preserve everything. Those museums in Moscow and Leningrad are just remarkable. The churches that they restore, they spend millions and millions of rubles on them.

And for some reason or another we just have never had the keen appreciation for our heritage that other countries that are much older than we are have.

But, Dr. Lovis, one of the questions I wanted to ask you: is there a list of archaeologically significant areas on private lands? Is there such a list or catalog anywhere?

Dr. LOVIS. Common procedure in most States is that the professional archaeological community acts as an interface between Federal programs and the larger public. They are responsible in many respects for gathering much of the basic data on private properties at present, and much of this information is then transmitted to state and Federal offices for compilation.

The primary role of the professional community in this particular instance is then to recommend sites that are National Register quality to the National Register of Historic Places. There are currently no good incentives for the State historic preservation office to go out and identify archaeological sites on private properties as a part of their day-to-day kinds of activities. It is primarily a review and compliance role.

Senator BUMPERS. Under existing national legislation on archaeologically significant areas, does that law require a finding in an environmental impact statement? If the government is getting ready to build a highway or if the State is getting ready to build a highway or they are getting ready to build a dam or anything else and there is a mandatory EIS requirement, does that EIS requirement have to address anything that is significant archaeologically?

Dr. LOVIS. If it is a Federally funded, permitted or licensed operation on private lands, then——

Senator BUMPERS. But if it is a private undertaking?

Dr. LOVIS. A private undertaking, there is no provision in law whatever for any kind of action to be taken other than by private funds or funds external to the Federal government.

Senator BUMPERS. Do you consider that a serious omission in the law or not?

Dr. LOVIS. I think that at present there are few incentives for private individuals to undertake preservation of significant sites on their own properties. I think that currently Federal law adequately addresses the impacts of Federal undertakings when they happen to impact private lands, and I think that has been a very effective kind of programming.

However, private citizens who have significant properties in their possession have very few incentives to maintain those properties as intact properties.

Senator **Bumpers**. Do any States or local governments that you know of have such requirements?

Dr. **Lovis**. There are in some cases municipal statutes that essentially provide for the same kinds of review and compliance procedures that are required by the Federal legislation. So that private communities in some instances have in fact recognized the importance of archaeological and historical resources and seen fit to institute local level kinds of statutes to protect and preserve significant sites within their jurisdictions.

Senator **Bumpers**. None of you have endorsed the concept of the central single, separate agency Would you like to address that, Mr. Oakes?

Mr. **Oakes**. Yes, sir. I thought I was trying to make a fairly strong point that in fact——

Senator **Bumpers**. I take it back. I do recall you did endorse that, did you not?

Mr. **Oakes**. Yes, sir. It is my feeling that there will be a great deal of positive things that will come from such an agency and that I think a good example of why we need that was just pointed out. We have recognized the need for CAPS, the center for applied preservation technology. And what we are doing is creating yet another leg of a multi-leg organization that contributes to its overall accomplishments but there is no one agency that is pulling together, planning, coordinating, making sure that we get the most out of those efforts.

I feel that the independent agency would do that.

Senator **Bumpers**. Anybody else wish to comment on that?

Mr. **Keune**. I will comment on that. At this time the American Institute of Architects does not support the creation of a separate, independent agency. We have enjoyed a long, productive relationship both with the National Park Service and the Advisory Council, and it is our view that the problems that I think precipitated the move towards an independent agency could be better dealt with by finding some mechanism to ensure better quality appointments to the positions who make decisions within those departments, particularly the Department of the Interior.

Secondly, we would like perhaps to suggest the idea of going back and looking at the organic act that created the National Park Service as a way of strengthening within that Act the authorities of the Park Service to deal in the field of historic preservation.

But we feel that the existing agencies can serve the appropriate functions, if given the proper authorities and the appropriate financial support to do the job.

[Subsequent to the hearing the subcommittee received the following:]

NCSHPO
National Conference of State Historic Preservation Officers

SUITE 332 HALL OF THE STATES
444 NORTH CAPITOL STREET, N.W., WASHINGTON, DC 20001-1512
202/624-5465

February 27, 1990

The Honorable Dale Bumpers, Chairman
Subcommittee on Public Lands, National Parks and Forests
308 Dirksen Senate Office Building
Washington, D. C. 20510-6158

RE: S. 1578 and S. 1579

Dear Senator Bumpers:

At the February 23, 1990, hearing on S. 1578, the Historic Preservation Administration Act, and on S. 1579, the National Preservation Policy Act, three questions were raised to which the National Conference of State Historic Preservation Officers would like to respond for the hearing record: 1. archeological sites on private land, 2. support for independent agency and 3. Fowler bills and Manassas.

LOCATION OF INFORMATION ON ARCHEOLOGICAL SITES ON PRIVATE LAND

Each State Historic Preservation Office contains an inventory of historic properties--archeological sites and above ground buildings and structures. Most of the properties on that inventory are on private land.

Inventory data is kept on cards or forms and/or in computerized data bases, on maps (usually 7.5 minute USGS maps), and in photographs.

The inventory data is in the public domain, although information on archeological sites is kept confidential to reduce the threat of looting.

Information on 2[illegible],000 archeological sites is included in the Arkansas inventory. State Archeologist Hester Davis informed the Conference that roughly 95% of those sites are located on privately owned land. The information has been computerized so that the SHPO office in Little Rock, as well as three federal agencies and the Arkansas highway department, have on-line access to the data. Site location information is not available to the general public because of the threat of looting.

Some states are aggressively working to encourage private property owners to protect archeological sites. A notable

Archeology on private land continued
example is the Kentucky Archeological Registry whereby private property owners of archeological sites apply to participate in the program which emphasizes site preservation.

Attached is an address list of State Historic Preservation Offices where the national inventory of historic properties is located.

SUPPORT FOR INDEPENDENT AGENCY CONCEPT

Of the witnesses at the hearing only the National Conference of State Historic Preservation Officers endorsed the independent agency concept. Our reasons for that support are outlined in our testimony.

The National Conference of State Historic Preservation Officers was the only non-administration witness who represents full-time participants in the national preservation partnership under the National Historic Preservation Act.[1] The representatives of the AIA, Indian groups, SAA, National Parks and Conservation Association view the administration of the national program as observers rather than participants.

The National Conference of State Historic Preservation Officers appreciates the opportunity the hearing provided to open discussions on the organization of the federal partner in the preservation program. The National Conference hopes the discussion can continue in order to find the best organizational structure, not for state or federal officials, but for the protection and conservation of our historic heritage. The Conference has also supported Senator Bradley's proposal (S. 844) to establish a Deputy Director for Historic Preservation in the National Park Service.

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[1] The National Trust for Historic Preservation does receive funds from the Historic Preservation Fund distributed by the National Park Service. However, those funds are provided "for the general purposes of the National Trust." The HPF funds to the Trust are comparable to an unrestricted gift to a charitable institution. The Trust has few strings attached to its HPF allocation. The State Historic Preservation Officers, on the other hand, have lots of strings tied to their HPF allocations as outlined in a 3" thick grants manual. The National Historic Preservation Act also requires the NPS to review the SHPO's program, so that every action of the SHPOs is open to minute NPS scrutiny.

PROTECTION PROVISIONS AND MANASSAS

The discussions "what if-ing" on whether if the Fowler bills had been law, would the "Manassas battle" have been avoided involved two separate questions.

1. What would have happened about Manassas if stronger protection legislation had been in place as in S. 1579?
2. What would have happened about Manassas if an independent preservation agency had existed as in S. 1578?

1. Manassas and stronger protection laws

The provisions in S. 1579, Section 111, provide stricter protections for a small, pre-determined list of historic properties of critical importance to the nation.

For the provisions of Section 111 to have come into play, Manassas would have to have been first defined as a historic property of critical importance.[3] Once defined as an area of critical importance, the Advisory Council would have had the authority and the responsibility to become actively involved in the land use issue. Section 111 would probably have brought the Council, representing federal preservation commitment, into the discussions early in the process, perhaps as early as the revisions to the county land use revisions.

The Advisory Council, under Section 111, would have had a single mission at Manassas: historic preservation. The Department of the Interior, a multi-mission agency (development and conservation), was not pro-active in the early stages of the Manassas issue. In fact, Interior may have taken actions early in the debate to prohibit, or discourage a preservation solution.

2. Manassas and independent agency

Had an independent preservation agency existed in the federal government when the Manassas issue surfaced, the citizen volunteers who led the battle would have had one specific place in the federal government to turn to. The Save the Battlefield Coalition would have had one person to ask for help, the Administrator of the Preservation

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[3] The draft National Heritage Conservation Act bill, mentioned by Jack Walter in his testimony, provides more automatic protections (and directives for improved planning) for all National Parks, and National Natural and Historic Landmarks.

2. Manassas and independent agency continued

Agency. It is likely that the involvement of the federal government's preservation point person, at the early stages of the discussion would have helped in a preservation solution.

Similarly, when development threatened the Waterford Historic District, local preservationists would have had one place to turn to for help.

The Administrator would have been accountable for the federal government's position on both Manassas and Waterford. If a James Watt-type had been the Administrator, and had refused to support a preservation solution, that Administrator would have been instantly accountable to the American people.

The current situation is blurred. Who can citizens turn to on preservation especially in controversial situations? Who has preservation responsibility and authority? The Secretary of the Interior and the Advisory Council (a 19-member body that meets quarterly) are both designated in the National Historic Preservation Act as preservation leaders. The Council is an independent agency but, as you know from the testimony presented at the hearing, the Council often defers to the Secretary in terms of program administration and leadership.

Would the Director of the National Park Service or the Executive Director of the Advisory Council take a stand on a major preservation issue, like Manassas, without the permission of their superiors?

In the end, the Save the Battlefield Coalition got results from Congress quicker than from the nation's designated historic preservation leadership.

The best situation would have been to have had stronger protection laws and an Administrator of a preservation agency whose only mission was preservation; an Administrator who was clearly charged with providing the leadership of the national historic preservation program. Such an alternative provides both the stick and the person to wield it.

Thank you for considering these responses and for making this letter part of the hearing record.

Sincerely,

Eric Hertfelder
Executive Director

EH:ns

cc: F. Lawerence Oaks, President, NCSHPO, and
Alabama SHPO, Alabama Historical Commission
Cathy Buford, Arkansas SHPO, Arkansas Heritage
Hester Davis, Arkansas State Archeologist
David Morgan, Kentucky SHPO, Kentucky Heritage Council
Jack Walter, National Trust for Historic Preservation
Jerry Rogers, National Park Service
Robert Bush, Advisory Council on Historic Preservation
Nellie Longsworth, Preservation Action

Senator **Bumpers**. Well, gentlemen and Ms. Funk, I thank you very much for being with us today. This is obviously going to turn out to be a major piece of legislation and it is going to be very complicated, and I assume that at some point this year we will put it on the calendar and start trying to mark it up and decide whether we can reach an agreement on this Subcommittee. But your testimony has been very helpful today and I thank you very much for being with us.

Our last panel is Mr. Jackson Walter, President of the National Trust for Historic Preservation; Bruce Craig, Cultural Resources Coordinator, National Parks and Conservation Association; and David Horan, Counsel, National Shipwreck Alliance of Key West.

Senator Wallop has sent word that he has a statement that he would like to put in the record and so at this point I will order that statement be put in the record in the place where opening statements are being made.

Mr. Walter, would you please proceed?

STATEMENT OF J. JACKSON WALTER, PRESIDENT, NATIONAL TRUST FOR HISTORIC PRESERVATION

Mr. **Walter**. Thank you, Senator. For the record, I am Jack Walter, the President of the National Trust for Historic Preservation.

It would seem to me that the clear lesson of the testimony today, Senator Fowler's proposals, and of my testimony would be that historic preservation seems to lend itself to legislation on a good many different, occasionally seemingly unrelated topics.

The agenda for the National Trust as it relates to Federal legislation is three-fold. First, to try to fix the problems with the historic rehabilitation tax credits; secondly, to try to cure the level of appropriation for the program; and the third program is the follow-up on the lessons from Manassas, an issue that Senator Fowler's bill, 1579, at section 11, puts squarely before us in this hearing.

Senator Fowler proposed a new set of Federal statutory protections for a class of nationally significant historic, cultural and natural resources. The absence of statutory protection for that class of resources that has real enforcement teeth is the reality today. The only route that was available to you two years ago with Manassas was to buy it.

Now it seems clear to me that the outcome of the Manassas debate should be thought of, on the one hand, as a glorious victory for historic preservation and, on the other hand, rather eloquent testimony to a terrible failure of public policy.

Senator Fowler proposes in his bill one route to try to cure this problem. It seems to me that on the day following President Havel's rather remarkable salute to the philosopher-politicians who put our country together it is appropriate to point out that Mt. Vernon and Monticello and Montpelier, the homes of those statesmen, the Founding Fathers, are totally without meaningful Federal protection.

They are owned by the Mt. Vernon Ladies Association, by the Thomas Jefferson Foundation, and by the National Trust, respectively, and are, accordingly, privately protected. But it still is the case that the snail darter has been accorded greater Federal statutory protection than have been the homes of the Founding Fathers of this country.

The National Trust and our partners in the historic preservation and the natural conservation fields have worked diligently to try to develop this concept that Senator Fowler put before the Committee. Think of it. If there is on the one hand some class, relatively small, of properties of incontestably national importance, whatever they may be—and we think we have a definition for that class, but it is relatively small—there should then be some kind of a list of quite stringent Federal statutory protections that attaches to that class.

Now, what I would say is, the smaller we can make this class, the longer we can make this list of protections without ruffling too many feathers. And I have tried that around, whether it at The Heritage Foundation, where in fact we have agreement that if we can keep that class of properties small enough we can have a list that is long enough truly to protect the properties of incontestable national importance. That is not everything on the National Register, and that is where we get into the problems.

We have a proposal. We have completely and thoroughly briefed the Committee. We call it the National Heritage Conservation Act. Our proposal, we believe—and it is our proposal in the sense that Mr. Oakes and the AIA and the National Parks and Conservation Association and a number of us have been working with it ever since virtually the night after the Manassas vote, to say what is the follow-up to the Manassas issue on the national public policy scale, given that we had on that one hand the public policy failure, even while we had a glorious victory, how would we fix the public policy problem.

And we think that this National Heritage Conservation Act proposal is our current best effort to try to fix that problem. And it goes to what kind of protections belong to that class of incontestably important national sites. To try to move that proposal along is the number one legislative proposal and agenda priority of the Trust. I encourage you with everything I possibly can to try to get back into this fray where we left it off at Manassas and see if we cannot pick up and move this issue of Federal statutory protections.

Thank you, Senator.

[The prepared statement of Mr. Walter follows:]

National Trust for Historic Preservation

Testimony of

J. JACKSON WALTER
President
NATIONAL TRUST FOR HISTORIC PRESERVATION

before the

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATE SENATE

February 22, 1990

Mr. Chairman and members of the committee, it is a pleasure to appear before the committee today to give you the views of the National Trust for Historic Preservation on S. 1578 and S. 1579, legislation sponsored by Senator Wyche Fowler of Georgia. Senator Fowler is a champion of both the nation's natural environment and historic resources and, by his introduction of these items of legislation, he has further evidenced the depth of his commitment and leadership. I welcome the opportunity of our testimony today to highlight those portions of these many faceted pieces of legislation that the National Trust believes merit the committee's especially close attention.

S. 1579, THE NATIONAL HISTORIC PRESERVATION POLICY ACT OF 1989

Lessons from Manassas: Protecting Critically Important Resources

As the 100th Congress drew to a close, this committee, under the impassioned leadership of chairman Bumpers, acted to save one of the most important pieces of the nation's heritage -- the Manassas battlefield. We learned then that federal law does not protect historic places of preeminent national significance from actions that take place outside their immediate boundaries.

The absence of a comprehensive national approach to protect nationally significant places leads to last minute crises that, as at Manassas, leave the federal government with no choice but to purchase property to preserve it from development. If we as a nation are to learn the lessons of that "third battle" at Manassas and remove the need to repeat the heroic efforts that were necessary to save that site, we must move quickly to adopt legislation that will ensure that other battlefields, national parks and landmarks are afforded new protection from public and private actions.

Senator Fowler has proposed in section 111 of S. 1579 that the Congress establish a new program of federal protection for a class of places identified as critically important. The National Trust, along with our partners in the historic preservation and natural conservation community, has devoted much effort to drafting recommendations that develop Senator Fowler's concept of critically important resources and the mechanisms for protecting them.

Our recommendations, embodied in a proposal titled the National Heritage Conservation Act, embrace a full range of nationally significant heritage resources including the national parks, national historic landmarks, national natural landmarks and other nationally significant places nominated by the Governors and designated by the Secretary of the Interior. The National Heritage Conservation Act would create a cooperative planning process that would seek to avoid the need for last minute crisis action. And, like section 111 of S. 1579, the proposal would grant the federal government emergency powers to forestall damage to significant resources.

As the committee considers section 111 of S. 1579, we are eager to share with you our recommendations for action.

Amendments to the Archeological Resources Protection Act

The National Trust welcomes the attention Senator Fowler has brought to strengthening the Archeological Resources Protection Act (ARPA) of 1979. Amendments to ARPA make up fully one-third of S. 1579. We are especially supportive of amendments contained in section 119 and 121 that would encourage the protection of archeological resources on private lands.

The protections currently afforded archeological resources are wholly inadequate. Unlike historic buildings and structures, archeological resources on private lands most often do not receive protection under local land use laws and can not take advantage of the majority of federal, state and local tax incentives.

The National Trust, through its field work, grant and loan programs, and advocacy, works to protect endangered archeological sites. For example, a recent National Trust loan helped save the Tallahassee, Florida site where Hernando DeSoto spent the winter of 1539 and where historians believe that the first Christmas was celebrated on what was to become United States soil. We are also litigating aggressively to ensure that archeological sites are protected from the adverse impact of surface coal mining.

We look forward to the comments of archeologists throughout the nation on the specific provisions contained in this legislation and we are eager to assist the committee in evaluating the recommendations.

Amendments to the Abandoned Shipwrecks Act of 1987

Section 123 would amend the Abandoned Shipwrecks Act of 1987 to extend federal protection of historic shipwrecks beyond the current three mile limit of state waters. Many of the wrecks that constitute historic time capsules of the discovery and growth of this nation are found outside the three mile limit. As the National Trust testified before the Congress when we advocated enactment of the 1987 law, we support the extension of protection to areas beyond the three mile limit to the extent consistent with international law.

Amendments to the National Historic Preservation Act

Next year we will celebrate the 25th anniversary of passage of the National Historic Preservation Act and its creation of a National Register of Historic Places. This committee, under the leadership of Senator Henry Jackson, played the lead role in securing this legislation which established a public private partnership for historic preservation.

That law has yielded enormous benefit to the nation over the past quarter of a century. It has led to the creation of the Advisory Council on Historic Preservation, state historic preservation programs, the expansion of the work of the National Trust, the identification of hundreds of thousands of historic places, and the protection of many historic places from adverse federal action.

As we approach this 25th anniversary, it would be most appropriate for the Congress to authorize a study of the National Register of Historic Places in order to determine how the valuable information it contains can best be put to work. We recommend this as an appropriate addition to S. 1579.

The National Trust believes that there are significant changes to the Act contained in S. 1579 that merit action at this time. However, given the success of the National Historic Preservation Act, the National Trust is reluctant to adopt Senator Fowler's suggestions for comprehensive recodification.

Senator Fowler proposes to make Indians and other Native American groups full partners in the national historic preservation program. We support changes to the Act in this area and believe that S. 1579 sets forth a reasonable approach to creating this partnership.

S. 1579 also recommends changes to section 106 of the National Historic Preservation Act to strengthen the protection process that has been ably implemented by the Advisory Council on Historic Preservation, federal agencies, and the state historic preservation offices. These changes will ensure that the intent of the 1966 Act -- that each agency fully consider the impact of their actions on historic places -- is carried out fully.

S. 1578, THE HISTORIC PRESERVATION ADMINISTRATION ACT OF 1989

Administration of the National Historic Preservation Program

This legislation would create a new, independent historic preservation agency that encompasses the functions currently administered by the National Park Service and the

Advisory Council on Historic Preservation. As the National Trust testified before this committee yesterday, we support the continued administration of the national historic preservation program within a strengthened National Park Service.

Preservation Technology

We wholeheartedly endorse the legislation's authorization of a National Center for Preservation Technology. I am proud of the role the National Trust has played in formulating this proposal. Working with the many public and private organizations concerned with preservation technologies, a National Center could foster research and the sharing of new technologies. We are grateful for Senator Fowler's promotion of this issue and look forward to working with the committee to formulate an appropriate administrative arrangement for the Center.

CONCLUSION

The legislation before the committee today is wide ranging and ambitious. The National Trust applauds Senator Fowler for presenting the Congress with such a rich and varied menu of ideas for improving the national historic preservation program. We urge the committee to choose from this menu those proposals that can be moved swiftly through the legislative process to enactment.

The National Trust especially urges the committee to move forward to examine fully Senator Fowler's concept of new protection for the nation's most significant historic places and we offer the committee the benefit of our work in developing the National Heritage Conservation Act proposal. We are eager to review this proposal with the committee, thereby helping to find ways to insure that the nation faces no more crisis choices of the type experienced at Manassas.

Senator BUMPERS. Thank you very much, Mr. Walter.

Mr. Craig.

STATEMENT OF BRUCE CRAIG, CULTURAL RESOURCES COORDINATOR, NATIONAL PARKS AND CONSERVATION ASSOCIATION

Mr. CRAIG. Thank you, Mr. Chairman. On behalf of the National Parks and Conservation Association, we would like to commend Senator Fowler for his two bills seeking to integrate a variety of programs and strengthen the preservation partnership between the Federal, State and local governmental entities.

We also certainly commend you, Mr. Chairman, for conducting this hearing, which is focusing much-needed attention on the national historic preservation program, a program that we believe is in need of increased Congressional attention, funding and structural reorganization.

NPCA, however, ascribes to a broader conceptual approach to heritage preservation than is envisioned in this bill. In our view, the American heritage is comprised of both this nation's natural and cultural resources, and in order to best preserve and protect this heritage, as well as to provide for recreational opportunities for Americans, as outlined in the President's Commission on Americans Outdoors, there is a need for an integrated program. And we believe that the National Park Service is in the best position to broaden and strengthen this unity of programs.

To this end, while we do not support a separate historic preservation agency, as previously testified yesterday on Senator Bradley's bill, S. 844, we do support the establishment of the National Park Service as an independent agency.

Mr. Chairman, you have heard testimony that responsibilities of historic preservation are thoroughly intertwined with other land management responsibilities of the National Park Service, and indeed this is true and in our view it can actually have a positive effect. I would draw your attention to the America's Industrial Heritage project approach, and what I would like to submit for the record is a little article on conserving America's heritage program.

The success of programs like the Industrial Heritage project, though, is dependent upon, as Senator Domenici has pointed out, sufficient funding, adequate levels of staffing and also Congressional support. We believe that the National Park Service, particularly the national historic preservation program component, is currently not adequately funded or properly organized to meet the needs of an ever-expanding national heritage program. That is why we embrace the establishment of a deputy directorate for historic preservation within the National Park Service.

With regard to 1579, we are particularly pleased to see provisions that strengthen the role of Indian tribes in the national preservation program, sections that deal with combatting looting and the illegal trade in archaeological resources, and also the provisions which strengthen preservation educational programs.

However, we do have a few concerns and suggestions regarding specific sections of the legislation which are detailed in our written testimony. What I would like to do is just focus on three points, though, if I may.

Number one is the concern with several sections of this bill which seek to codify into law certain requirements for management of programs which presently are addressed in regulation. One example would be section 110, which deals with the national landmark program. We believe it would be far wiser to address many of these concerns through regulatory reform as needed.

The second point deals with the concerns of the archaeological community. Section 15 of this bill deals very much with this issue, and we believe it treats the archaeological resources and standards for the archaeological community very well. Our concern, though, is that other pertinent cultural resource management disciplines and their professional organizations, their views, are not quite addressed adequately in this bill as it is presently written.

Finally, Mr. Chairman, our last comment would focus on section 111, which we are pleased by Senator Fowler's realization that there indeed is a need to address and protect the needs of the historic and archaeological resources that are of critical importance. Ever since the successful conclusion of the long-fought victory to protect the Manassas Battlefield battle, which of course came to a dramatic high point in the closing moments of the 100th Congress with your stirring and memorable presentation on the floor of the Senate, NPCA, along with our preservation partners, including the National Trust for Historic Preservation, have indeed established the National Heritage Coalition, which is a coalition which represents an unprecedented coming-together of preservation, conservation and veteran organizations, all of whom recognize the need to address protection issues that relate to our national patrimony.

To this end, NPCA fully supports virtually every major concept that is outlined in section 111 of this legislation, which seeks to protect and place the highest degree of protection on historic properties of critical importance.

Mr. Chairman, Senator Fowler, his staff, and certainly the many preservation organizations that have contributed in the drafting process of this legislation deserve accolades for their efforts to strengthen the partnership between Federal, State and local government. Though NPCA may not be in total agreement with every provision in this legislation, we commend you, Senator Fowler and others for your heroic efforts to strengthen our nation's heritage program.

[The prepared statement of Mr. Craig follows:]

STATEMENT OF BRUCE CRAIG
CULTURAL RESOURCES COORDINATOR
NATIONAL PARKS AND CONSERVATION ASSOCIATION

SUBMITTED TO THE
SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS
ON S. 1578 AND S. 1579
HISTORIC PRESERVATION ADMINISTRATION AND POLICY ACTS
February 22, 1990

My name is Bruce Craig, Cultural Resources Coordinator for National Parks and Conservation Association (NPCA), a private non-profit membership organization founded in 1919 that seeks to promote the preservation, protection and public understanding of our nation's national park system. Our Association appreciates the opportunity to testify on behalf of our 100,000 members on two bills today, S. 1578, legislation to create an independent Historic Preservation Agency and S. 1579 legislation to amend the National Historic Preservation Act and other related acts to strengthen the preservation of our historic heritage.

We commend Senator Wyche Fowler for introducing both these bills which together is a landmark effort seeking to integrate a variety of programs and strengthen the preservation partnership between the federal, state and local governmental entities. Mr. Chairman, we also commend you for conducting this hearing which is focusing much needed attention on the national historic preservation program, a program that we believe is in need of increased Congressional attention, funding and structural reorganization.

NPCA, however, ascribes to a broader conceptual approach to "heritage preservation" than is envisioned in this bill. In our view, the American heritage is comprised of both this nation's natural and cultural resources. In order to best preserve and protect this heritage, as well as provide for recreational opportunities for Americans as outlined in the President's Commission on Americans Outdoors, there is a need for an integrated program. We believe this is best achieved through having a single federal agency direct and coordinate that national heritage preservation program which we view is composed of three components: historic preservation, natural resource/ conservation and recreation.

To this end, while we do not support separating out the so-called "external" preservation function out from the National Park Service and merging this program with the Advisory Council for Historic Preservation in order to create a separate Historic Preservation Agency as outlined in S. 1578, as we have previously testified before this Subcommittee during the hearing considering Senator Bradley's S. 844 (an act to establish a National Park System Review Board), we do support establishment of the National Park Service as an independent agency. Similarly, we support greatly strengthening the bureau's abilities to oversee the national heritage program.

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To this end, we see great benefits to an approach that would create a three person Deputy Directorate within the National Park Service. This would include: a Deputy Director of the National Park Service, a Deputy Director for Recreation, Conservation and Open Space, and a Deputy Director of Historic Preservation and Cultural Resources. Such a conceptual framework would raise the national historic preservation program to its rightful place within the national heritage program, as an equal with the other two components---our national park system and our natural and recreational heritage program.

Mr. Chairman, you have heard testimony today that the responsibilities for historic preservation are thoroughly intertwined with other "land management" responsibilities of the National Park Service. This indeed is true and in our view can have a positive effect. Instead of separating out historic preservation, we should look to broadening and strengthening the unity of interests that comprise our nation's heritage. The remarkably successful program spearheaded by the National Park Service in the America's Industrial Heritage Project provides an excellent example of how the various programs administered by the National Park Service can be integrated successfully.

Here, the cause of preservation is being well served as the collective expertise of the National Park Service is being focused on a nine county region in south-western Pennsylvania. We see in this region a true partnership between the federal, state and local entities who are successfully preserving not only that region's historic heritage but also its natural and recreational heritage as well. There are other examples across the country that also are worthy of note---Pennsylvania's Delaware and Lehigh Canal, the Blackstone River Valley National Heritage Corridor in Illinois, the Salem Project in Massachusetts, the West Virginia Coal Heritage program where the NPS is again the lead agency drawing together a comprehensive statewide plan for the preservation of West Virginia's heritage. Also worthy of mention are several special projects where the National Park Service has already made significant contributions in regional land use/preservation planning and economic development---the Lowell National Historical Park, Voyagers National Park, and the urban revitalization realized in Philadelphia as a result of the Independence National Historical Park bicentennial project are but three examples.

Mr. Chairman, this is the type of heritage partnership we need to foster as we approach the 21st century and there is no other federal agency so well positioned to broaden and strengthen the unity of our national heritage program than the National Park Service.

But the success of these projects is dependent on sufficient funding, adequate levels of staffing and congressional support. We believe that the National Park Service, particularly the national historic preservation program component, is currently not adequately funded or properly organized to meet the needs of an ever expanding national heritage program. That is why we embrace the proposal for the establishment of a Deputy Directorate for Historic Preservation within the National Park Service. This individual can work in partnership with the two other Deputy Directors to work for enhanced funding and personnel in order to build and enhance the partnership with with other Federal, State, local and private preservation agencies and organizations. It is also for that reason that we support several key elements of Senator Fowler's legislation, particularly provisions of S. 1578 calling for simultaneous submission of agency budget estimates to the President, OMB as well as House and Senate Appropriations Committees (page 7: Section 5-h-2) and the provision for the creation of a National Center for Preservation Technology (page 12: Section 8).

With regard to S. 1579 we commend Senator Fowler's effort to strengthen and improve the accountability of our national preservation program. We are particularly pleased to see provisions strengthening the role of Indian tribes in the national preservation program (page 66: title III), sections seeking to combat looting and illegal trade of archeological resources as well as the provisions that strengthen preservation education programs (page 76: Title V) and the provision to include "landscapes" as a component of the National Register (page 16: Section 109). We do however, have a few concerns and suggestions regarding several specific sections of this legislation.

First, the thrust of this bill appears to shift a major responsibility of carrying out the national historic preservation program away from the federal government to the states. NPCA's philosophical approach to the National Heritage program seeks to place national heritage program oversight, coordination and certification of state programs squarely on the shoulders of the federal government. And as we have testified previously, although improvements are needed, we believe the National Park Service is best equipped to serve as the lead federal agency with regard to this function. However, we do support strengthening the federal government's commitment to the states by appropriating more money out of the Historic Preservation Fund for the purpose of providing much needed preservation grants to the states. We also firmly believe the states, acting through the State Historic Preservation Officers, should have their role as partners in the national preservation program codified in law.

However, from our perspective, certain provisions in this legislation weaken the existing preservation "partnership". For example, language in Section 105, empowers a federal agency, in certain instances, to enter into agreements with the Advisory Council, a State Historic Preservation Officer or Tribal Historic Preservation Officer, thereby delegating certain federal responsibilities to certain non-federal preservation entities. Such a provision may ultimately lead to a general abdication by federal agencies of their obligations and responsibilities under the national heritage program. This trend has already manifested itself with regard to provisions that exist in law relating to environmental compliance (i.e. in many instances the Army Corps of Engineers has elected to delegate its environmental compliance responsibilities to the state highway commissions, a procedure which has periodically resulted in harm to resources despite provisions of the 4-(f) requirement codified in the Transportation Act). Harm to our nation's heritage has resulted, not because states seek to deliberately damage these resources, but simply because states often do not have sufficient funds, the staff or expertise to adequately address such mandated legal environmental compliance requirements.

Second, we note language in this legislation also changes the character of the Advisory Council from functioning as an "advisory" board to that of an administrative body (see page 13: Section 105-k) within the proposed new historic preservation agency. We believe there are many advantages to continuing the existing framework.

At present, the the Advisory Council For Historic Preservation has a strong degree of independent oversight and/or consultative authority over both the lead federal preservation agency, other federal agencies, state and other preservation organizations. Our experience is that the cause of heritage protection and preservation is best served when programmatic oversight and management responsibility does not rest in a single political entity.

Our third major concern relates to several sections of the bill which seek to codify in law certain requirements for management of programs which presently are addressed in regulation. We agree with those who argue that because of the comprehensive and sweeping nature of the reforms detailed in this bill, contemplated revisions need not be codified in law but could be more substantively and thoughtfully addressed through the established programmatic revision process.

For example, Section 110 relates to the National Historic Landmarks program. The Landmark program is presently the primary mechanism for the National Park Service to identify properties possessing "national significance," one of several factors considered when a property is assessed as a potential new unit to the National Park System. Mr. Chairman, we believe there is a need to examine the relationship of the Park Service's two landmark programs (the National Historic Landmark and National Natural Landmarks program) to each other. If it is determined that a single "Heritage Landmark Program" is in the best interests of the program then such revisions should be codified in law. However, provisions in this section, including many worthwhile improvements (i.e. owner notification, the establishment of boundaries for historic landmarks) and other issues not addressed (including references to the adequacy of the themeatic framework, the necessity for establishing professional peer review standards for landmark theme and special studies and the role of the National Park System Advisory Board in recommending landmark designations for the Secretary of the Interior), perhaps could be more thoughtfully addressed through seeking revisions to relevant sections of the Code of Federal Regulations. We believe it would be far wiser to address many of these concerns through regulatory reform as needed.

Mr. Chairman, our fourth point focuses on several titles in this bill which address the concerns of the archeological community. Section 15 establishes "Archeological Research Priorities," section 118 establishes "Archeologists Professional Standards," Section 112 establishes an Archeology Advisory Board and Title V Education and Training specifies the Society for American Archeology" as a group that must be consulted and cooperated with. While it is certainly laudable to address the concerns of the archeological community, (and this bill does an admirable job in doing so) this bill also should give equal emphasis to and address the concerns of other pertinent cultural resource management disciplines and their professional organizations (i.e. History---The Organization of American Historians; Curation---The American Association of Museums to name but two). As presently drafted, this bill does not adequately reflect the concerns of these important players in the field of cultural resource management.

Mr. Chairman, our last comment focuses on Section 111. We are very pleased by Senator Fowler's realization that there is a need to address the preservation and protection needs of historic and archeological resources of critical importance (page 23: Section 111). Ever since the successful conclusion of the long fought victory to protect the Manassas battlefield---a fight which came to a dramatic highpoint in the closing moments of the 100th Congress with your stirring and memorable presentation on the floor of the Senate Mr. Chairman---NPCA along with our preservation partner, the National Trust for Historic Preservation, have established the National Heritage Coalition, a coalition which represents an unprecedented coming together of preservation, conservation and veteran organizations, all of whom recognize the need to address the protection issues that relate to our national patrimony. To this end NPCA fully supports virtually every major concept outlined in Section 111 of this legislation which seeks to place the highest degree of protection on historic properties of critical importance.

As the National Heritage Coalition continues to explore the best way to protect units of the National Park Service, both National Historic and National Natural Landmarks as well as other properties identified by the states found by the Secretary of the Interior to be unique or uniquely representative and therefore worthy of maximum Federal protection, we look forward to working with this subcommittee in finding solutions to these heritage protection concerns.

Senator Fowler, you and your staff as well as many preservation organizations that have contributed in the drafting process of this legislation deserve accolades for your efforts to strengthen the partnership between the federal, state and local government. Though NPCA may not be in total agreement with every provision of this legislation, we commend you for your heroic effort to strengthen our nation's heritage program.

Thank you Mr. Chairman. I would be pleased to answer any questions, you or the other members of the subcommittee may have.

Senator **Bumpers**. Thank you, Mr. Craig.
Mr. Horan.

STATEMENT OF DAVID HORAN, NATIONAL SHIPWRECK ALLIANCE

Mr. **Horan**. Chairman Bumpers, staff, ladies and gentlemen, I am testifying today on behalf of the National Shipwreck Alliance. NSA is a recently-organized coalition of shipwreck diving interest, including sport divers, clubs and shop owners and underwater equipment companies and their associations. The purpose is to "protect and promote the American tradition of free enterprise in the exploration and recovery of lost or abandoned shipwrecks."

My name is David Paul Horan. I am an attorney from Key West, and for the past 16 years I have represented a majority of the modern American salvors. In the past ten years I have testified every year before the houses of Congress, hopefully against absolute governmental ownership of lost and abandoned shipwrecks.

It worked for eight years, but Jim Wright in the House and Senator Bradley in the Senate, pushed the Abandoned Shipwreck Act through in 1988 and now section 6 of S. 1579 would extend Federal ownership 200 miles from our shores. Well, my tired and worn presentations over the last decade failed to persuade, so here is a new way of looking at that inclusion of section 6.

Have you ever stopped to think that we are in danger of forgetting the distinct difference in our government, between ours and everyone else's? What is the difference? It sure is not our elected form of government. It really is more basic than our Constitution, and most of our schools and colleges do not even teach it.

What makes us different is law. You see, our laws are different from any other country's laws. In our country, laws are a restriction on our previously-unrestricted rights. Everywhere else, we find that law is a grant of power or grant of right from the all-powerful sovereign.

How many times do you as legislators have someone make a presentation on why you should not allow some business to do something? During the past ten years I have heard numerous legislators comment on the shipwreck bill, something like Congress just cannot hand over these historic shipwrecks to private enterprise or private salvors. In other words, how much is Congress going to give private industry and private risk capital?

Today I am the only one making a presentation specifically opposing the inclusion of the Abandoned Shipwreck Act into S. 1579. On behalf of a vast majority of the American citizens and all of private enterprise and private risk capital, I am not asking you for any rights or grants or handouts of any kind; I am asking you only to do one thing. Please do not interfere with a functioning system of law, both national and international.

For the past 16 years I have a big part in developing the law of admiralty in this country and I am real proud of it. My court decisions have directed the constitutional exclusive jurisdiction of Federal district courts under Article III, Section 2, to the protection of historical and archaeological significant of shipwrecks.

When we leave the U.S. territorial limits and the territorial jurisdiction of our Federal courts, we are in international waters and we are squarely within an area where the U.S. treaty power has specific application. Our Treaty on the Continental Shelf states as follows: "It is clearly understood that the rights in question do not cover objects such as wrecked ships and their cargoes, including bullion lying on the seabed or covered by sand of the subsoil." That is a direct quote from the International Law Commission's report on the Convention on the Continental Shelf. So you are running slap into that.

Now, more than that, to a very large degree the shipwrecks within 200 miles are inaccessible. Private industry in this country, using the latest of technology, is raising and spending millions of dollars of private risk capital in deep water shipwreck search, exploration and recovery.

Now just plain common sense will tell you that with this kind of expense historical and archaeological documentation to the greatest extent is ensured. It is simple. Private enterprise has found out that if you do a real good job historically and archaeologically then your product is worth more. It is worth more when you donate it to museums or you sell it to the public in the form of coins or something that are duplicated that come off these wrecks.

One last point. If the Abandoned Shipwreck Act has in fact been passed in 1970, Mel Fisher, one of my clients, would have never begun his quest to find the Atocha. Most of you are probably aware of the search and recovery of the treasures of this 1622 Spanish galleon. I litigated that case for seven solid years, ending up in 1982 before the Supreme Court of the United States.

With the United States, 13 individual States, Guam, American Samoa, and Puerto Rico on the other side, we won it all. That is right; every single one of us, every American won, and everybody in the United States and outside the United States won. You see, I won because the court awarded everything to my client.

My client won because his dream finally came true, because three years after that court decision he found the major part of this. Ten years to the day after the loss of his oldest son and daughter-in-law in a tragic accident at sea, he found the primary cultural deposit. It was a ballast pile, tons of gold and silver, and incredible archaeological and historical treasures.

Now, how did everybody else win? Well, over one-half of the Mel Fisher and Treasure Salvors' recovery from the Atocha ended up in private museums or Federal museums or State museums. Recoveries were donated by investors. In spite of the best efforts of government, it worked. There was more archaeology and more history brought to more people from one shipwreck than nearly all the other State and Federal programs combined.

We all got the vicarious thrill of fulfillment of Mel Fisher's dream with the knowledge that only in this country could you win in spite of the best efforts of your State and Federal Governments to take that dream away. This is truly an American dream, but the Abandoned Shipwreck Act being included beyond State boundaries would make this American dream criminal looting.

I hate to do this, but if I can close with this. History and archaeology and law look back at the past, and with this look back it gives us a perspective and a direction from the point we now find ourselves. Using this vantage point, you navigate the future course of search and recovery and dissemination of data and objects recovered from shipwrecks beyond territorial boundaries out to 200 miles.

The present process that we have in the Federal district court works for all of us, every single one of us. The only people and organizations you are going to hear attacking the constitutional grant of power to the courts are historians and archaeologists who see private industry and private risk capital as an attack on their government grants or jobs.

The caveat of the law of restrictions on previously-unrestricted rights is this: In our form of government, you are given the power to pass laws by our votes, with two restrictions. One, there must be a demonstrable need for the restrictions, and, two, the restrictions should never exceed the absolute minimum necessary to accomplish the protection of the individual rights of all of us.

No legislation is needed. However, if any legislation is passed, all you could do is codify my Admiralty decisions into the shipwreck recovery and maritime claims statutes under Title 46. If you did that, it would absolutely ensure the Federal court's concurrence, all historical and archaeological protection would be carried out, and there would be a display and preservation of all recoveries.

Thank you. I apologize for taking so much time.

[The prepared statement of Mr. Horan follows:]

National Shipwreck Alliance
317 Massachusetts Avenue, N.E.
Washington, D.C. 20002
202-231-3666/202-544-6798

Alliance for Maritime Heritage Conservation
American Sport Divers Association
Quicksilver International
International Scuba Association
PRIDE

February 22, 1990

Mr. Chairman, Members of the Committee, Ladies and Gentlemen:

I am testifying today on behalf of the National Shipwreck Alliance (NSA). The NSA is a recently organized coalition of shipwreck diving interests including individual sport divers, dive clubs, retail dive shop owners, commercial underwater equipment companies and their associations. Its purpose is to "protect and promote the American tradition of free enterprise in the exploration and recovery of lost or abandoned shipwrecks".

My name is David Paul Horan and I am an attorney from Key West, Florida. For the past sixteen (16) years I have represented the majority of modern American salvors, and for the last ten (10) years, I have testified each year before both Houses of Congress against absolute governmental ownership of lost and abandoned shipwrecks.

It worked for eight (8) years, but Jim Wright from the House, and Senator Bradley from the Senate, pushed the Abandoned Shipwreck Act through in 1988 and now, Section 6 of Senate Bill 1579 would extend federal ownership to 200 miles from our shores. Well, my tired and worn presentations over the last decade failed to persuade, so, here's a new way of looking at the inclusion of Section 6 in the Bill. Have you ever considered that we are in danger of forgetting the one distinct difference between our government and everyone else's government? What is that difference? It surely isn't just our elected representative form of government, and, it is even more basic than the Constitution. And, most of our schools and colleges don't even teach it.

What makes us different, is law. Our laws are different from any other countries' laws. In our country, laws are a restriction on previously unrestricted rights. Everywhere else, law is a grant of power - a grant of rights from the all powerful sovereign.

How many times do you as Legislators hear someone make a presentation on why you shouldn't allow some person or business to do something? During the past ten (10) years I've heard numerous Legislators comment on the Shipwreck Bill. They've stated that Congress couldn't let the Admiralty Courts continue to control the recovery of historical shipwrecks - that Congress just can't hand over historic shipwrecks to private salvors. In other words, how much is Congress going to give private industry and private risk capital?

Today, I am the only speaker who opposes the inclusion of the Abandoned Shipwreck Act into Senate Bill 1579. Unfortunately, it looks like it was planned that way. But, on behalf of a vast majority of United States citizens and all of private enterprise and private risk capital, I'm not asking you for any rights, grants, or hand-outs of any kind. I'm only asking you not to interfere with a functioning system of law - both national and international. For sixteen (16) years, I've had a big part in developing the law of admiralty in this country, and, I'm proud of it. My Court won decisions have directed the Constitutional exclusive jurisdiction of the Federal District Courts under Article III, Section 2, to the protection of the historical and/or archeological significance of shipwrecks.

When we leave the U.S. Territorial limits and the territorial jurisdiction of our federal courts, we are in international waters. We are squarely within an area where the U.S. Treaty power has specific application. In our Treaty on the Continental Shelf the following is very clear:

> "It is clearly understood that the rights in question do not cover objects such as wrecked ships and their cargoes (including bullion) lying on the seabed or covered by sand of the subsoil." International Law Commission's Report on the Convention on the Continental Shelf (U.S. General Assembly Official Records, Eleventh Session, Supplement No. 9 (A/3159), p.42.

But, more than that, to a very large degree, the shipwrecks within the 200 mile limit are in deep inaccessible waters. Private industry in this country, using the latest technology is raising and spending millions of dollars of private risk capital in deep water shipwreck search, exploration and recovery. Now, common sense should tell you that with this kind of expense, historical and/or archeological documentation is insured. It's simple - private enterprise has found that if you do a good job historically and archaeologically, then your product is worth more - both for donation to museums and in sales to the public. One last point, if the Abandoned Shipwreck Act had been extended beyond state boundaries in 1970, Mel Fisher would have never begun his quest to find the ATOCHA. Most of you are undoubtedly aware of his successful search and recovery of the treasures of the NUESTRA SENORA DE ATOCHA, a 1622 Spanish Galleon. I litigated that case for seven (7) solid years ending up in 1982 before the Supreme Court of the United States. With the United States, thirteen (13) individual states, Guam, American Samoa and Puerto Rico on the other side, and after all this we all won. Every single person in the world won. You see, I won because the Court awarded everything to my client. My client won because his dream finally came true when three (3) years after the Supreme Court decision and ten (10) years to the day after the loss of his oldest son and daughter-in-law in a tragic accident at sea, he found the primary cultural deposit - the ballast pile with its tons of gold and silver and incredible archeological and historical treasures. And how did everyone else win? Over one-half of everything that Mel Fisher and Treasure Salvors recovered from the ATOCHA went into public museums, both state and federal. The recoveries were donated by the investors. In spite of the best efforts of government, it worked. There was more archeology, more history, brought before more people from this one shipwreck than all of the federal and state programs combined. Every person could enjoy the vicarious thrill of the fulfillment of Mel Fisher's dream with the knowledge that only in this country could you win in spite of the best efforts of your state and federal governments to have the dream taken away. This was truly an American dream.

History, archeology and law all look back at the past, and, it is this look back that gives us perspective and direction from the point where we now find ourselves. Using this vantage point, you will navigate the future course of search and recovery and dissemination of data and objects recovered from shipwrecks from the territorial boundaries out to 200 miles.

The present process works and it works for all of us. The only people and organizations you'll hear attacking the constitutional grant of exclusive jurisdiction over admiralty and maritime claims are historians and archaeologists who see private industry and private risk capital as an attack on their government grants and jobs.

The caveat to law being restrictions on previously unrestricted rights, is that each of you was given the power by individual votes to restrict our individual rights. With our consent in the form of your election, you were given the power to pass laws with two (2) restrictions. One - there must be a demonstrable need that requires the legislation. And, two - no restriction should ever exceed the absolute minimum amount necessary to accomplish the protection of the individual rights of all citizens.

No legislation is needed on the Federal Court's control regarding the search, exploration and recovery of shipwrecks. However, if you find that some legislation is desirable, then merely codify my admiralty decisions into the Shipwreck Recovery and Maritime Claims Statutes in Title 46 of the United States Code. This will insure and accomplish historical and archeological protection and the preservation and display of recoveries.

THANK YOU.

Senator **Bumpers**. That is all right. That was a very interesting statement about something that most of us here do not come in contact with very often.

Just to continue that, as a matter of personal interest to me, how far out from the shoreline was that Spanish galleon found?

Mr. **Horan**. It was 11 miles beyond the Marquesses Keys, and the only thing that kept it from being included within State boundaries was that the demarcation between the Atlantic and the Gulf was three miles to the north of the wreck site and it made it outside the territorial limits. That really would not have been, I think, a major problem at that point.

Senator **Bumpers**. How does Florida regulate shipwrecks within its waters?

Mr. **Horan**. Well, up until then I had declared the State law to be unconstitutional as a violation of Admiralty's due diligence requirement. In other words, under the State program, they would just lease the property. There was no restriction on how much you had to work or whether you even went out there and did anything.

And Admiralty law superseded that. That was really what caused the first hearings back in 1980, when it was first proposed that they would pass a law that gave everything to the States lock, stock and barrel and no questions asked.

Right now what is interesting is that I am still representing some people down there in Florida, and we are working under the new Abandoned Shipwreck law and we are running into archaeologists that have taken the oath of some of their archaeological associations that say that no private salvors and no private people will ever be allowed to keep anything that comes up from these sites that they see as archaeological heritage of the American people.

So, because of that, the entire State program has just gone into absolute stasis because nobody, none of the archaeologists—I mean, they told my clients. I cannot work with you. I cannot help you in this deal because you are wanting to keep part of what you bring up, and if I do that I am violating the oath of my association and they are going to kick me out.

So that is the kind of thing we are running into, and it is just not working. I know that there are two or three different wrecks that the technology has expanded so far that there are wrecks being found. But you are never going to hear anything about them. The strongest incentive is against anybody saying that they found anything, so what you are going to see is a lot of coins that could have come from any wreck over the Bahamas or whatever, and they are going to be on the market and anything that would identify a specific wreck, if it is out of precious metals, will be melted down.

We are going to lose more history and more archaeology than we have ever known to exist.

Senator **Bumpers**. Mr. Horan, do any States prohibit private salving?

Mr. **Horan**. All of them do now.

Senator **Bumpers**. They all do?

Mr. **Horan**. Absolutely.

Senator **Bumpers**. You are prohibited from doing anything?

Mr. HORAN. Now there are some of them that will go ahead and work. In New Jersey I have just got something through with a contract with the State of New Jersey that took us about, Lord, four or five years to negotiate. But that one is a contract which gives the State a certain percentage, up to a certain amount of the recovery, and things like that.

So there are a couple of States that will work with you. But by and large most of the States see that private industry and private risk capital doing this is so antagonistic to the position held by some of the State archaeologists that they absolutely think you are the enemy.

I mean, when you walk in, they brand you that you are the enemy and from that point on they are not going to work with you.

Senator BUMPERS. Was it the *Titanic* that was found a couple of years ago in the North Atlantic?

Mr. HORAN. The *Titanic*, yes. Ballard found the *Titanic*.

Senator BUMPERS. What was the geographical location of the *Titanic*?

Mr. HORAN. It is well beyond the 200-mile limit.

Senator BUMPERS. It is way out in the middle of the North Atlantic.

Mr. HORAN. Yes, and it is extremely deep. A lot of the wrecks that are being worked right now and some of the technology that is being developed is going to give us the capability of working out to that 200-mile limit. As a matter of fact, there are some that are right now being done.

Senator BUMPERS. You mean well beyond the 200-mile limit?

Mr. HORAN. No, up to it and well beyond it. But I am talking about a mile, two miles deep. And in that, when you are putting that kind of money in, we are talking about blowing $7 million before you ever do anything, before you bring the first thing up, and when you do that, if you are not doing your archaeology and your historical research, you are not going to maximize your recovery.

And that would be such a small part of what it costs you to go out there and do it. It is not like a shallow shipwreck site because a shallow shipwreck site, some nut with an outboard can go over there and start wiping it out and truly do a good job of messing it up. That is why I believe that parts of this bill are good.

You have got a part of that bill that would give them the right to come into court. I was interested in your questions to Senator Fowler. Part of the bill would give them the right to come in and get preliminary permanent injunctions. By the way, because I have done so much fighting against the government, I can tell you this: There is no problem with the government. The government has got a specific statute that says they do not have to put a bond up for temporary injunctions. So the government does not have to do it. They do not have to worry about that at all.

Senator BUMPERS. I had a little experience with that, though.

Mr. HORAN. If there is a taking adjudicated. But a long way before that is regulatory work which still allows you a beneficial economic use, which will get you out of the Fifth Amendment taking. I do a lot of inverse condemnation in Florida and represent the Florida Keys.

Senator BUMPERS. Can a defendant in an injunction suit like that, not ask the Court to ask the plaintiff to show cause why he should not be required to put up a bond? Does the court not have that discretion?

Mr. HORAN. No, sir. There is a specific provision.

Senator BUMPERS. You are telling me the United States Government is absolutely relieved of any responsibility for putting up a bond?

Mr. HORAN. Right. And not only that, but if they turn around and take something—I am in the middle of that right now. They came down and took—remember all those boats the United States took from the Mariel boatlift?

Senator BUMPERS. Yes.

Mr. HORAN. They destroyed them, totally destroyed them, put beautiful yachts between steel shrimp boats and let them crush. They are totally without being held to account for it. There is a statute directly on point. The government can get away with it.

Senator BUMPERS. My practice was always in the taking. I do not think I ever handled a case where the government was just seeking some sort of injunction or even a mandatory injunction.

Mr. HORAN. I would believe this, that when it goes before a Federal district court judge and they apply for that injunction, it better be something that is not so prohibitive as to bankrupt the guy or the Federal court is going to say, okay, I am going to give you a real fast hearing and then I am going to deny it.

And I believe that is what is going to happen. But let us say that you have got 150 acres and maybe ten acres of it might be something that is of really great significance and the rest of it may be of marginal significance. That is where the court is going to take its equitable jurisdiction and say, okay, this part is going to be saved. That is not a taking. The partial restriction, as you know, is not going to be adjudicated to be a taking. So I do not see that problem.

In the case that I am talking about with shipwrecks, this trust can come in in the court as a public interest intervenor and say, we do not believe that that salvor is doing a good job on protecting the archaeological and historical integrity of that wreck site, and therefore we want an injunction until such time as they come up to at least minimum standards.

I proposed minimum standards back in 1984 to 1987 in my three years of presentations, and they did not get anywhere because of the commitment that Jim Wright had made to the Texas Antiquities Commission. I could not get anywhere on that one.

Senator BUMPERS. Mr. Walter, what is your feeling about the central separate agency where all of these agencies would be put under one umbrella?

Mr. WALTER. I was in this room yesterday, Senator, testifying on S. 844, which is Senator Bradley's bill, which I testified in favor of keeping the historic preservation programs within the National Park Service in the Interior Department.

Senator BUMPERS. How about you, Mr. Craig?

Mr. CRAIG. We testified on that bill, S. 844, as well. We testified that the National Park Service should be made an independent agency entirely outside of the Department of the Interior.

Senator **Bumpers**. There just does not seem to be, at least in this hearing today, much sentiment for the establishment of a separate agency, but I do think Senator Fowler has certainly honed in on a problem. And maybe what we are going to wind up doing here, if we are able to do anything at all with these bills, is just to simply recognize the points that Senator Fowler is making and try to strengthen the laws to protect these areas.

I think you are probably in pretty good shape, Mr. Horan. There is not a hell of a lot of interest here in shipwrecks, to tell you the truth.

Mr. **Horan**. Lord, I hope so.

Senator **Bumpers**. That is conditioned on you letting me invest in some big one you know is coming up. When I heard about what the investors on the *Titanic* made, I must confess I was a little jealous that I did not have money invested in it. No, it was the Spanish galleon, was it not?

Mr. **Horan**. Yes, the *Atocha*.

Senator **Bumpers**. Well, I will not keep you any longer, gentlemen. You have all made fine contributions. I appreciate very much the time you took to prepare your testimony and coming here to be with us.

The subcommittee will adjourn.

[Whereupon, at 4 p.m., the hearing was recessed subject to the call of the Chair.]

HISTORIC PRESERVATION ADMINISTRATION ACT OF 1989 AND THE NATIONAL HISTORIC PRESERVATION POLICY ACT OF 1989

SATURDAY, MAY 19, 1990

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS,
NATIONAL PARKS AND FORESTS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Savannah, GA.

The subcommittee met, pursuant to notice, at 9:35 a.m., in Eichberg Hall, Central Railroad Station, Savannah, GA, Hon. Kent Conrad presiding.

OPENING STATEMENT OF HON. KENT CONRAD, U.S. SENATOR FROM NORTH DAKOTA

Senator CONRAD. Welcome and good morning. It is good to see you all here this morning. The purpose of this hearing is to receive testimony on two bills pending before the Subcommittee on Public Lands, National Parks and Forests of the Senate Energy and National Resources Committee. Those two measures are S. 1578, to provide for the creation of an independent Historic Preservation Agency and a National Center for Preservation Technology; and S. 1579, to amend the National Historic Preservation Act, the Historic Sites Act, the Archaeological Resources Protection Act, the Abandoned Shipwreck Act and certain related Acts to strengthen the preservation of our historic heritage and resources.

The Subcommittee is here today because of the efforts of the former member of the Committee and my very good friend, Senator Fowler. I would like to take this opportunity to compliment Senator Fowler for the leadership he has consistently displayed in introducing these new bills. And he has been a tireless advocate for the preservation of this nation's heritage and is recognized in Washington both on and off Capitol Hill as a champion of historic preservation.

Now, let me just say in Washington, we always talk about our good friends. But, I can say with all sincerity that Senator Fowler has been a very good friend of mine. We served not only on the Energy and Natural Resources Committee together, but the Agriculture Committee. And I would just like to express, if I can for a moment, a personal note. You are very fortunate to have someone of Senator Fowler's stature, ability and energy representing this state.

Senator FOWLER. Take as long as you need.

Senator **Conrad**. He has already moved into a position of great leadership with the United States Senate. That is very rare for a first-term Senator. As you perhaps know, he is on the Negotiating Committee of the Budget Summit. But I just want to say, as a member of the Budget Committee, that if Senator Fowler's views prevail, there would not be a problem with the Federal budget deficit. He has been one of the leaders in trying to bring the deficit under control and has consistently supported measures in the Budget Committee offered by myself and others and measures offered in his name as well to do something serious about one of the significant problems facing the country.

In addition, he has been a leader on the Agriculture Committee. And as someone who is a city boy from Atlanta, he has taken on the cause of this state's farmers. And I can tell you, we have had a long tradition of a partnership between North Dakota and Georgia on agriculture issues. This is a relationship that has gone back for decades. And many people are not aware of it, but in the United States Senate, Georgia and North Dakota have been partners in fighting for agriculture.

Well, that is not the focus of the hearing today. The focus of the hearing today is historic preservation. And Senator Fowler is acknowledged as the leader in the United States Senate on historic preservation. And after a brief tour of Savannah last night, I can understand why. You have much to preserve. This is absolutely a glorious city, and we would like to share that with the rest of the country.

I look forward to learning here today a great deal from the knowledgeable list of witnesses that have been assembled. Through your testimony, I hope to gain a more complete understanding of the extent of the threats that currently exist to areas of great historic value.

Before we begin the hearing, I would just like to take care of a few administrative details. To expedite the hearing, witnesses will testify in panels. When your name is called, please bring your copies of your written statement with you at that time and take a seat at the table. The staff will collect the statements and distribute them to us.

Because of the large number of witnesses appearing today, it will be necessary to limit your oral testimony to five minutes, and we will not be rigid about that. But, if you could attempt to limit your oral testimony to five minutes or thereabouts, the complete written statement will appear in the record as presented. We have a timer here. This little system we have of green and red lights to help us indicate when you are reaching the end of the time.

The hearing record will remain open for two weeks so that others who are here who might want to offer testimony for the record can do so. And if anyone would like to submit a statement for the record, if you would send it to the Senate Energy and Natural Resources Committee in Washington, D.C., we would appreciate that. Obviously, if you would have a statement available for us here today, we could take that as well.

With that, again, let me welcome all of you who are in attendance, both the witnesses and others who are here. And now I turn to my colleague, Senator Fowler, for his presentation. Senator Fowler.

[The prepared statement of Senator Conrad follows:]

STATEMENT BY THE HONORABLE KENT CONRAD

The purpose of the hearing this morning is to receive testimony on two bills pending before the Subcommittee on Public Lands, National Parks and Forests of the Senate Energy and Natural Resources Committee. Those two measures are S. 1578, to provide for the creation of an independent Historic Preservation Agency and a National Center for Preservation Technology; and S. 1579, to amend the National Historic Preservation Act, the Historic Sites Act, the Archaeological Resources Protection Act, the Abandoned Shipwreck Act, and certain related Acts to strengthen the preservation of our historic heritage and resources.

The Subcommittee is here today because of the efforts of a former member of the Committee and my good friend, Wyche Fowler. I would like to take this opportunity to thank Senator Fowler for the leadership he has displayed in introducing these two bills. He has been a tireless advocate for the preservation of this nation's heritage, and is recognized in Washington, both on and off Capitol Hill, as a champion of historic preservation causes and goals.

Although I am not as familiar with these measures or these issues as my colleague, I look forward to learning a great deal from the knowledgeable group of witnesses who will appear here today. Through your testimony, I hope to gain a more complete understanding of the extent of the threats that currently exist to our historical resources, and the approach these bills take to alleviating those threats.

Before we begin the hearing, I would like to take care of several administrative details. To expedite the hearing, witnesses will testify in panels. When your name is called, please come forward, take a seat at the table, and bring copies of your written statement with you at that time. The staff will collect the statements and distribute them to us. Because of the large number of witnesses appearing today, it will be necessary to limit your oral testimony to 5 minutes. We have a timer here to help keep us on track. Please keep an eye on it as you testify and please conclude your statement when the red light appears.

The hearing record will remain open for two weeks for additional statements. If anyone would like to submit a statement for the record, please send it to the Senate Energy and Natural Resources Committee in Washington, D.C.

STATEMENT OF HON. WYCHE FOWLER, JR., U.S. SENATOR FROM GEORGIA

Senator **Fowler**. Well, I do not know how I can respond to the kind words of my friend, Kent Conrad. The plan that I am presenting to the President of the United States to get some fiscal help and financial integrity for the peoples of the United States of America is a plan drafted by Senator Conrad. He is a former tax commissioner from North Dakota. He is a lot older and wiser than he looks. And he has really been a bulwark exposing the financial chicanery that we have received in the Senate in budgets in recent years. It is actually been an embarrassment that recent Administrations in Washington have treated the budget of the United States of America as a political document and not a serious financial document to be presented. Get a little press release out of it and then walk away from it as the deficits mount. It really ought to be Kent, rather than myself, staring the Administration down and trying to make them do right. But I am armed with all of his homework and all of his steadfastness as I will lead a budgetary reform of fiscal integrity.

I am certainly delighted that he could take the whole weekend and come here to Savannah to hold this hearing. I thought a little coastal cuisine would be good for him, fatten him up a little bit while he is here and send him home to his bride, and to see the great parts of our state. And I am very grateful, with all the claims on his time thousands of miles away, way up on the northern plains, that he would come.

Ladies and gentlemen, I have a speech that I will give here with all my friends here before we go to the Mayor of Savannah and all of our panelists. I asked the Energy Committee to have this initial hearing on my bills here in Savannah for obvious reasons. The citizens of Savannah led the way in our state in showing that historic preservation need not conflict in any way with economic development. Historic preservation enhances everything about the community in preserving these priceless historic resources, but also by doing so, it adds to the business climate and the opportunities not only for tourism, but for just enhancing the pleasures of life and becomes a good place to live and the right place to live. I am very pleased with the work that also has been done in Macon, Thomasville and other parts of our state.

But, Savannah, I must say, and I think you would all acknowledge, really has been our leader not only in its success in historic preservation, but also a leader, I must say, throughout the country in preserving low-income housing and a place for our lower income citizens amidst the preservation that has been accomplished.

It is not an easy task. It has been accomplished almost totally with volunteer efforts. But one of the reasons for my bills is that local efforts alone cannot always succeed. The problem is too great. Those who would trade off the quick profit at the expense of a priceless treasure, as we saw in the Manassas battlefield and even attempts at Fort Frederica, need a strong, united national preservation effort and organization behind them.

That is really the heart of my bill to give some strength to the local efforts when that effort is needed. And I think that we are a long way down that road mainly because of the coordinated efforts of the representatives of local and national preservation societies and organizations that you are here from this morning.

We can maintain economic vitality and enhance that with our preservation efforts. By this kind of education, I think we will do something worthy to be remembered, worthy to be cherished. I am very, very grateful to all of the panelists of the organizations represented here to help us make that case.

Mr. Chairman, again, thank you. We are delighted to have you, and I think we might want to start with the distinguished Mayor of the City of Savannah, Mr. John P. Rousakis.

[The prepared statement of Senator Fowler follows:]

Savannah Preservation Hearing
Public Lands Subcommittee
Senator Wyche Fowler, Jr.
May 19, 1990

I want to thank my good friend Senator Conrad for chairing this hearing on my proposals for strengthening our federal preservation programs. He has gone way out of his way to come down to Savannah this weekend instead of heading home to North Dakota, but I think a little sun and coastal cuisine will do him good. And his effort to come all the way here to chair this hearing on preservation policy reflects his commitment to preserving the precious treasures and symbols of our history. That has not been an easy job in the last decade or so.

Throughout the 1980s we fought off administration attempts to weaken historic preservation programs and to zero out the historic preservation fund. Despite this tenuous federal commitment, preservation forces won their biggest national victory in 1988, when Congress intervened to protect the Manassas National Battlefield Park from a tremendous regional shopping mall and surrounding commercial development which was already underway.

The repercussions from that controversy reach far beyond the rolling fields and congested roads of Northern Virginia. Manassas marked the emergence of historic preservation as a truly national issue.

That happened partly because of the outrageousness of the proposed development, trading off priceless historical values for shopping mall revenues. But I do not think that is the whole story.

The fight to save the battlefield struck a chord nationally because Americans everywhere recognized this conflict between preservation and so-called progress as one that has become more critical than ever before in their own communities. We are quite simply facing the permanent loss of historical resources, on an unprecedented scale, throughout this country.

Our home state of Georgia is no exception:

*In northwest Georgia, we had to save another important part of our Civil War heritage from development pressures. Again, Congress ultimately prevented highway widening through the Chickamauga National Battlefield Park by appropriating federal funds for a bypass.

*Closer to home here on the coast, a major retail and residential development, complete with 170-slip marina, has been proposed next to Fort Frederica, where James Oglethorpe turned back the invasion of the English colonies from Spanish Florida in 1742.

*Up the road in Atlanta, Loew's Grand -- where "Gone With The Wind" premiered -- is long since razed, along with many other landmark's of the city's history. The Fox Theatre was narrowly saved after a public outcry. Every time I visit there I am reminded of the treasure that would have been lost -- and of the many others that have been lost.

Fortunately, there is a growing awareness that the public interest in preservation does not have to conflict with the economic interests of our communities.

We are sitting here in one of the best examples in the country. It is hard to imagine Savannah without its Monterrey Square or Telfair Fountain, and Savannah's historic district makes it a major tourist destination. Savannah and Macon, Georgia, have both led the way in combining historic preservation with the provision of low-income housing. Even the major metropolis of Atlanta is trying to avoid past mistakes by adopting a comprehensive preservation plan.

Efforts to prevent the destruction of our historical riches have always depended on the dedication and hard work of interested citizens, usually volunteers, within local communities.

I know of no better example than Savannah -- in the entire country -- to demonstrate how preservation can form part of the social fabric and economic vitality of a city.

We must encourage local citizens to persist, but in this day that is not enough. We must also attempt to aid their efforts by crafting sound national policies for protecting our public lands and cultural treasures.

We must recognize what the Manassas controversy has already demonstrated -- and what this administration has finally acknowledged, for the first time since 1982, in President Bush's budget proposal -- that preservation is a national priority, that requires national leadership. Under the pressure we now face, no local framework can be relied on, alone, to meet our public obligation to our common heritage.

I have introduced two pieces of legislation, S. 1578 and S. 1579, to reinforce our national leadership, by strengthening and streamlining federal preservation programs.

The Historic Preservation Administration Act embodies fundamental -- and therefore controversial -- organizational reforms of our preservation effort. It would provide central coordination for preservation research and training. It also seeks to bring greater expertise and build a better system of accountability into federal preservation decisions. It would do that by creating one central federal preservation agency.

The second bill, the National Historic Preservation Policy Act, is aimed at reasserting federal leadership in cooperation with bolstered preservation efforts by the private sector and state

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and local governments.

The bill would also reinforce federal protection for historic properties, which now in most cases has no teeth at all. It would also establish a comprehensive education and training program, designed to increase public awareness of preservation concerns.

Once again, I am sure that Savannah can serve as the model city for the rest of the country in the way this city brings preservation issues before the people, and makes them an integral part of public policy and community life. I hope that improved federal policies can help duplicate your achievements in Georgia, in North Dakota and around the nation.

SENATOR WYCHE FOWLER, JR.

SUMMARY OF NATIONAL HISTORIC PRESERVATION POLICY ACT

The National Historic Preservation Policy Act (S. 1579) is aimed at strengthening, and improving the accountability of, our national preservation program. The bill represents the first comprehensive update and fine-tuning since 1980 of the two cornerstones of our national preservation program: the National Historic Preservation Act and the Archaeological Resources Protection Act. It is based on the following principles (with the appropriate section of the proposal indicated in parentheses):

1. Re-asserting federal leadership (Title I) while recognizing and providing for the Federal/state/local/private sector partnership which has evolved in recent years (Titles II and IV), and for the first time, extending this partnership to Indian tribes (Title III).

2. Strengthening federal protection for historic properties (Sections 101-112).

3. Strengthening the federal archaeology program, both in protection and content (Sections 113-123).

4. Further defining the role of States in the national preservation program by allowing State programs to take on additional responsibilities while insuring they receive adequate resources to do so (Title II).

5. Strengthening the role of Indian tribes in the national preservation program (Title III).

6. Defining the role of local governments in the national preservation program while providing sufficient flexibility to allow for diverse and innovative local approaches to preservation needs (Title IV).

7. Strengthening preservation education programs (Title V).

The major features of the proposal are:

* Clarifying, coordinating and strengthening federal preservation programs, including federal agency responsibilities (Sections 101, 102, 103 and 108), the National Register of Historic Places (Section 109), and National Historic Landmarks (Section 110). Among these provisions are a requirement that federal agencies demonstrate that there was no "prudent and feasible" way for Federal agencies to follow the Advisory Council on Historic Preservation's recommendations for

minimizing harm to historic properties adversely affected by federal undertakings (Section 102(a)(3)(B)(iii)), new preservation responsibilities for Federal agencies working abroad (Section 108), and strengthened authorities for timely Federal action to protect threatened historic properties (Section 111).

* Improving the conduct of federally-sponsored archaeology by focusing on important research topics (Section 116), requiring the professional certification of participating archaeologists (Section 118), and creating a broadly representative Archaeology Advisory Board to help guide Federal archaeology policies (Section 122). With the Federal government currently spending approximately $300 million a year on archaeological projects, taxpayers certainly have a right to expect that these projects produce the maximum return in increased understanding and enhanced protection for the archaeological record of our national heritage.

* Combatting the looting and illegal trade of archaeological resources by: calling for an international conference on the antiquities trade (Section 117); providing information and incentives to encourage private owners of archeological resources to protect those resources (Section 119); establishing a new government-sponsored registration of antiquities program to both encourage the conduct of scientifically valid excavations and create a potential market incentive in favor of certified antiquities (Section 121); and extending Federal protection to submerged archaeological resources, including abandoned shipwreck sites, lying up to 200 nautical miles offshore (Section 123).

* Clarifying and strengthening state preservation programs, by allowing the states to assume additional responsibilities for administering the national program, while insuring that the states will be reimbursed for the costs of carrying out these duties (Section 201).

* Defining and strengthening the role of Indian tribes within the national preservation program (Section 301), and providing greater sensitivity to the concerns of Indian tribes by allowing tribes (rather than Federal agencies) to assume responsibility for issuing permits for archeological work on tribal lands (Section 114(d)) and establishing a federal policy on the reburial of human remains and grave-associated artifacts which gives priority to the wishes of living descendants (Section 120).

* Defining the role for local preservation programs

within the federal/state partnership and allowing qualified local programs to take on additional responsibilities (Section 401).

* Requiring the Advisory Council on Historic Preservation to establish a comprehensive education and training program, designed to increase public awareness of preservation concerns, to increase opportunities for avocational preservationists to participate in the federal program and to expand training opportunities in the field (including special assistance to Historically Black Colleges and Universities and to schools with large numbers of American Indians). In order to insure that sufficient priority is given to the program, a requirement is made that all recipients of grants from the Historic Preservation Fund carry out appropriate forms of education and training as components of their Federally assisted preservation programs (Section 501).

Senator **Conrad**. Very well, we will do precisely that. Mayor Rousakis, welcome. And if you will proceed with your testimony. It is very good to have you with us here this morning.

STATEMENT OF HON. JOHN P. ROUSAKIS, MAYOR, SAVANNAH, GA

Mr. **Rousakis**. Senator, thank you very much. I did not—I do not have any prepared testimony. I did want to present a welcome, but Senator Fowler has already addressed and incorporated in his comments everything I was going to say about this city. But, I do want to welcome you and thank you for holding this hearing in this city. And the fact that both of you serve on the Agricultural Committee. Is that right? We wanted to touch base on the scuppernong crop this year and see what we could do about—it was not too good.

Senator **Conrad**. Brother Fowler is reminding me of these kinds of things all the time.

Senator **Fowler**. The last time I drank a bottle of scuppernong wine, my doctor said I had the worst case of diabetes he had ever seen. [Laughter.]

Mr. **Rousakis**. Seriously, welcome to the city that would be just an ordinary city without preservation. A city that did not have the love of its people and its government and its business to restore and rehabilitate and preserve. It would just be an ordinary city. We are not an ordinary city. We are an extraordinary city because of preservation.

So, welcome. I hope you have a chance to see a lot of Savannah while you are here. You see an example. This was an old railroad building. It is a Savannah College of Art and Design. This is an example of what can be done with buildings in this community that today need to be restored. All around you, you see examples of what has been done, through group efforts and not just one single group—not just the Mayor, not just Lee Adler's efforts, but the combined efforts of the community committed to the preservation and committed to making this not a tombstone, but preservation as a stepping stone—a building stone for economic development in this area.

I applaud your efforts on putting on the front burner again the historic preservation on the national agenda of this nation. Your proposals for the new Agency and for the new Advisory Board certainly have merit since many of the proposals called for reasserting, strengthening, defining, redefining, clarifying, coordinating and improving without any specific language included in all that as the details of what you want to do. I would not be prepared to comment at this time on those proposals.

I would however ask this as you move on and as you develop this legislation and this program that you do involve local government because without us, it is not going to work and it has got to have our input.

So, we welcome this effort and applaud this effort very much and look forward to being a part of working with you in helping to make it a reality. Thank you very much for coming.

Senator **Conrad**. Thank you, Mayor. We appreciate again very much your participation here this morning. Maybe you could just share with us from your perspective what threats have you had to overcome in preserving what has been preserved so well here in Savannah? As you have moved through the process, and you have a series of properties as we can see some of them out these glorious windows here this morning, what kind of challenges have you had to surmount in order to do what has already been done so well here?

Mr. ROUSAKIS. Well, I think it is probably—restoring many sections of the downtown residential area where families were moved or had to move because of the economics of the restoration. We address that somewhat in the Landmark programs. We work together to keep people to restore, rehabilitate and keep people there with a variety of Federal programs that were available, and unfortunately, lost a lot of those tools to do that.

The other obstacle of sorts was the concern by some of the community that we were doing nothing but preserve, to the detriment of everything else, to the detriment of progress, the detriment of economic development. But the track record has shown that it has been a successful marriage, that it can be done and that is the success of it. We are not just a museum where people walk by and buy tickets. We are a living restoration here that has worked with commercial development, with business development, with schools in the area, stores in the area. So, I think that obstacle has been overcome to a great extent by the record of preservation in this community.

Senator CONRAD. Let me ask you one other question that relates to the reaction of the business community. In some areas, the business community says, "Look. Historic preservation is going to work against economic development." Have you found that to be the case here in Savannah, or have you found that the preservation efforts have contributed to economic vitality in the area?

Mr. ROUSAKIS. While we may have one or two that complain that preservation stifles economic developments or they have problems with it as far as personal projects concern, as I mentioned, to the contrary, it has enhanced the economic development of downtown Savannah. It would not be where it is and where we are going with it without that. And, we have successfully blended economic development with historic preservation and restoration here. So, it is one of the great success stories of restoration is that you can have both and have both successfully.

Senator CONRAD. That really is the challenge to have the balance between preservation and economic development. Clearly, you have been meeting that challenge well here. A closing observation, I noticed that they are almost completed with the Wyche Fowler Memorial Bridge. And I just want you to know, Senator Fowler was not on the Appropriations Committee at the time. But, he found a way to influence the member of the Appropriations Committee, including my senior colleague from North Dakota who was on the Appropriations Committee, to support that bridge project. And I hope that is something that is going to be useful to the community.

Mr. ROUSAKIS. Senator, I have got a 10:30—everybody wants things on Saturdays now from the Mayor. No longer is it Monday through Friday. It is Saturdays and Sundays. As a matter of fact, tomorrow, we are meeting, for your information, Wyche, with some other members of the National Olympic Committee on the bid for

Atlanta as the 1996 Olympics, which will include Savannah. We will be yachting competition here.

Senator FOWLER. I had dinner with the Yachtsmen last night.

Mr. ROUSAKIS. Well, I will have lunch with them tomorrow and see some of them.

Senator FOWLER. I have already done a little pre-sell.

Mr. ROUSAKIS. Oh, good. But as to the bridge, you are right. Senator Fowler did have a strong part in playing that, but the name will be for the Wyche Fowler approach to the John P. Rousakis Bridge. [Laughter.]

Senator CONRAD. Very good. Thank you very much for your attendance here this morning. And we absolutely understand the need for you to take care of some of your other responsibilities as Mayor. Again, we appreciate your participation.

Our first panel will have as members Doctor Elizabeth Lyon of Georgia State Historic Preservation Office, Gregory Paxton of the Georgia Trust for Historic Preservation, Nancy Tinker of the Georgians for Preservation Action and Dwight Kirkland of the Society for Georgia Archaeology.

Welcome to all the members of this panel. We appreciate your willingness to help us here this morning. And if you would proceed, we will go through each of the members of the panel and then have time for questions. So, if we could start with Dr. Lyon and proceed with the other members of the panel. Welcome.

STATEMENT OF DR. ELIZABETH A. LYON, DEPUTY STATE HISTORIC PRESERVATION OFFICER AND CHIEF, HISTORIC PRESERVATION SECTION, PARKS, RECREATION AND HISTORIC SITES DIVISION, GEORGIA DEPARTMENT OF NATURAL RESOURCES

Dr. LYON. Thank you. I am very pleased to be here to have an opportunity to offer comments on these preservation bills on behalf of the state of Georgia State Historic Preservation Office of this region, as well as of the state's program. And I have brought with me testimony from some of the other state offices and from our state archeologist, who works closely with our program, which I have given to your staff.

My written comments have offered a historical perspective on the development of state historic preservation offices as the administrative focus of this national program in each state. I think it is very important to sometimes look back as we decide where we are going to see where the program has been and to look at some of the basic premises that have been there from the beginning, which our Senator has seen fit to as to build upon. And we are very appreciative of the efforts of Senator Fowler to strengthen and improve this program.

Some of the basic principles and premises that survive, and I think of all of those, the most important is the notion—a basic premise that our nation's history is really the soul of its local and state history and that the program that has been crafted and has developed over the years has allowed us to recognize the diverse resources, such as those you and I were talking about, Senator Conrad, this morning, and the diverse resources from across the country, and yet, do this in a consistent national framework which supports the program. That basic principle is important to preserve.

I have also given you some of the inputs of the particulars of the program as you will see them in Savannah. We are very supportive of the improvements that are proposed, especially the codification of responsibilities at each level and the inclusion of travel programs we particularly appreciate as a state Government office for the provision of a greater delegation of authority to the state, which we hope will reduce the paper burden that has occurred to the program over the many years.

We appreciate the flexibility that you have offered for us to work with local governments and local programs because I agree with the Mayor that that is very important and has been an important part of Georgia's programs. We like the provisions for heritage and professional education and the emphasis on that because that sometimes in the past has been difficult to support since it was not written in specifically into the bills. And the attention to archeological and Indian issues. And I would note the support of state archaeologists for those provisions in the sheets given to you in his testimony.

And to say that the SHPO, the State Historic Preservation Officers, of the region—of the nation are naturally not unanimous on all counts, but we have through our organization worked with the staff on this bill and are very, very much supportive of all of it.

We hope that these improvements can assure that historic preservation can continue to contribute to economic and community life as you see it in here in Savannah and as the preamble to the Act almost 25 years ago said, "A living part of community life and development." That is what we have tried to do here in Georgia, and we believe that this legislation will help us and strengthen our abilities to do that.

And I thank you for this opportunity.

[The prepared statement of Dr. Lyon follows:]

Testimony: Georgia State Historic Preservation Office

S. 1578 and 1579:National Historic Preservation Policy Acts

May 19, 1990

Subcommittee on Public Lands, National Parks and Forests

I am pleased to have the opportunity provided by the Subcommittee on Public Lands, National Parks, and Forests to offer comments on historic preservation bills on behalf of the state historic preservation officers of this region and Georgia's historic preservation program. We appreciate the efforts of Georgia Senator, the Honorable Wyche Fowler, to strengthen and improve the nation's historic preservation program. We are pleased to add our support to that of the national organization which represents the state programs, the National Conference of State Historic Preservation Officers (NCSHPO) for these efforts.

In view of the fact that the national preservation program will soon celebrate its twenty-fifth anniversary, an historical perspective can be useful to the decisions which must be made about the program's future. The National Historic Preservation Act of 1966 set out to strengthen the preservation efforts of the states through grants for surveys, plans, and restoration of properties. The federal government would expand the National Register to include properties at all levels of significance, protect properties through Section 106 and provide assistance to the states. It seemed simple enough, but it contained no structure or direction to the states, and local government programs were not foreseen.

Since 1966, the states, with the encouragement and assistance of the federal program, have built professional staffs and developed programs and functions which were written into law in the amendments to the Act of 1980. These amendments also made provisions for certified local programs which have now grown in number and effectiveness. Other federal laws, especially for archaeology, and the rehabilitation tax incentives have provided opportunities and added useful directives. Issues to be addressed by all of these initiatives have grown ever more complex as historic preservation becomes a more fundamental part of community life.

Throughout these changes and developments, however, certain basic premises and principles survive.

- We have recognized the diverse cultures, history and structure of governmental systems in the states and shaped the program to take these into account.

- We have structured the program on the belief that the nation's history is the sum of its state and local history and in the importance of a national framework for historic preservation.

- We have used national criteria and standards, arrived at through a consensus of the states, to help determine what is important to preserve, to support quality decisions and to establish the value of historic resources.

- We have worked to make the preservation of historic properties an integral part of community life and development, as the preamble to the Act of 1966 directed.

Through a program based on these principles, we have seen how an understanding of the past through the preservation of its tangible reminders provides continuity and stability, fosters community pride, and contributes richness and variety to contemporary life. Finally, we have seen the effectiveness of a program that facilitates preservation through a variety of tools and incentives designed to, as the old saying goes, "help people to help themselves".

I believe what you see around you here in Savannah effectively illustrates these points. For examples, surveys, funded in part by historic preservation fund grants have helped the Historic Savannah Foundation, and other local organizations identify historic and archaeological properties. The National Register has recognized the signifiance and preservation value of properties and districts from Savannah's earliest period with its distinct plan of squares to early twentieth century area residential areas with their particular architecture and planning. The Register has also recognized important commercial and industrial properties like Factors Walk along the river and the Central of Georgia Railroad complex. Rehabilitation grants have helped to preserve endangered properties such as the railroad buildings. Tax incentives have stimulated private investment, not only in commercial offices and shops downtown, but also in housing for low and moderate income households such as the projects of Savannah Landmarks,Inc. in the Victorian district. Reviews of federally funded and licensed projects have assured that historic properties were considered in development projects,such as the new Talmadge Bridge. Technical and planning assistance has supported a variety of local activities that are preserving the diverse cultural heritage of this city. Similar results can be seen in large and small communities across Georgia.

Archeological resources, whose preservation value to the contemporary environment is often more difficult for the general public to understand, have also been assisted by the national program, especially through the reviews that are mandated by the federal law. For example, information and artifacts recovered from such federally funded projects as the waterfront park and the new federal building in Savannah have added to our knowledge of the city's development.

The comments of other southeastern states will show a similar experience in using the national program. While their particular program focus may be different, the general framework within which they work is similar.

There is no doubt that the national laws, especially after 1966, and the framework provided by the federal government have enhanced the states' efforts to preserve their heritage. The national historic preservation program provides an effective and efficient example of a truly federalist system. In fact a study of federalism in the early 1980's came to this conclusion, finding the preservation program to be a good example of this system with the administrative center in state government containing the professional expertise and knowledge needed to support the local level, and in turn inform the national level. The federal funds that have been used for the program are very small in comparison to most federal programs and have been matched many times over at state and local levels. The funding mechanism, based on the principle of using funds generated by the depletion of one resource to renew another, is appropriate. Georgia has repeatedly urged that these funds be set up in a trust fund that can bring stability and predictability to funding not only for historic preservation but also for natural and recreational resource conservation. We believe that all of these resources will enhance each other and protect our environment as we grow and change in the future.

In summary, Georgia believes that the national historic preservation program can be strengthened and made more efficient by the changes proposed in this legislation. We have worked with the NCSHPO as this organization has explored the changes and opportunities that are embedded in key features of these bills. We believe that the more than twenty years experience of the states in developing workable and efficient programs should be and has been taken into account. In particular, we note the possibility of reducing the administrative burden and paperwork costs that have accrued to the program in recent years by the provision for greater delegation to the states. We are pleased to see that the title for local programs makes provisions for all local governments to participate. Although Georgia does not have federally recognized Indian tribes it does have many properties associated with its Indian heritage and we are glad to see these issues addressed by the legislation. The clarification of roles for all the government preservation partners through separate titles for each, is a substantial improvement. In view of the difficulty many states have faced in using federal funds to support heritage education and public awareness activities, we are very glad to see a title for both professional and public historic preservation education. The improvements to protection offered in the legislation and outlined in more detail in NCSHPO comments made previously to the Committee are welcome and should assist the states in this often frustrating and controversial aspect of their work. We also note the improvements to protection for archeological sites, the reasonable solution for the treatment of human remains and associated grave goods and the incentives to the preservation of archeological remains on private lands.

We believe that the national program as administered by the states working with local governments and a network of agencies and organizations in each state can demonstrate impressive results that need to be continued. We have begun to protect our heritage of historic properties. We have seen historic preservation contribute to economic and social development in revitalized neighborhoods, interesting and viable downtowns, heritage tourism, and growth management. The improvements to the program proposed in Senator Fowler's legislation can help to assure that our historic properties can continue to be, as the preamble to the 1966 Act said, a living part of community life and development.

Prepared by:

Elizabeth A. Lyon
Deputy State Historic Preservation Officer and
Chief, Historic Preservation Section
Parks, Recreation and Historic Sites Division
Georgia Department of Natural Resources

Senator CONRAD. Thank you very much. As I indicated, our intention is to go through each of the witnesses and then have time for questions. So next, we will go to Gregory Paxton, Georgia Trust for Historic Preservation. Welcome and proceed.

STATEMENT OF GREGORY B. PAXTON, EXECUTIVE DIRECTOR, GEORGIA TRUST FOR HISTORIC PRESERVATION AND CHAIRMAN EMERITUS OF PRESERVATION ACTION

Mr. PAXTON. Thank you, Senator. We appreciate Senator Conrad and Senator Fowler coming out this morning. Thank you for your interest and concern in historic preservation.

I am Executive Director of the Georgia Trust for Historic Preservation and Chairman Emeritus of Preservation Action, which is a national lobbying group, and will be testifying for both organizations today. The Georgia Trust is a 7,000 member non-profit statewide organization dedicated to the preservation and enhancement of Georgia's cultural resources, particularly the built environment. And Preservation Action is the national citizens' lobby for historic preservation based in Washington.

The preservation community is a very diverse and complex community. It is comprised in the law of state, national and local public agencies, all of which are written into national law; national, state and local non-profit organizations, and we have more than 400 such history- related organizations in Georgia alone; the private sector; and professionals, including architects, archaeologists and others. And all of these groups are represented on the Board of Preservation Action and on the National Preservation Coordinating Council, which serves as a body to foster communication and seek consensus on preservation issues.

As a result of this complexity, a change in preservation law requires broad ranging consideration. And over the last three years, spurred by the State Historic Preservation Officers, consensus has been produced on several elements in the bills—in the two bills introduced by Senator Fowler a year ago. And I would like to discuss some of those consensus issues this morning.

But first, a word of appreciation for Senator Fowler's interests in advancing preservation law. Never in the history of the preservation movement has an elected official and his staff, particularly Bill Johnstone, worked so hard to seek complete—seek to completely understand the needs of the field and to amend existing law to address these needs. And Georgia is really proud to have a Senator who is so ably representing our constituency, and we thank you.

Funding is the greatest need in preservation today. And we feel the federal deficit is of grave concern to all of us. But, $34 million recommended in the President's budget is simply too little to provide for the most basic needs of a national program with 59 states and territorial offices. Most, in fact, of the public funding for the federal program comes from state and local governments, with federal dollars at about half the level reached in the 1970's when the movement was still a fledgling. Less than 25 percent in constant dollars. Inadequate funding at the $34 million level will result in the loss of our national heritage. We feel it is that simple. And the—we recognize the difficulty of establishing trust funds, but if the commitment to preserve our national heritage is not permanent, then neither will be that national heritage. This year, we are asking Congress for $61 million to fund this program through the Historic Preservation Fund.

We also remain concerned about historic preservation tax credits which were an enormously effective tool made ineffective by the tax law changes in 1986. And we hope that the amendments approved by the House Ways and Means Committee and the full House and the Senate Finance Committee last year will be part of tax law changes for this year.

A third major concern is for protection of historic and archaeological resources. The current National Historic Preservation Act provides little protection for these resources. Protection at the local level through preservation commissions or at the state level does not address federal projects. And more protection, in fact, is offered through the National Historic—I am sorry—the National Highway Act and through the Army Corps permitting process that is offered through our own preservation law.

In Georgia, just 75 miles south of Savannah is the 1736 site of Fort Frederica, which Senator Fowler mentioned a few minutes ago, established just three years after the founding of Georgia. It is really responsible for the southern boundary of the Thirteen Original Colonies. It has over 300,000 visitors annually to an area that has been a national park since 1948. And yet, a large scale marina proposed immediately adjacent on public waters has been slowed only by the Army Corps permitting process, not by national preservation law. This site is on the National Trust's list of eleven most endangered properties in the country. We support the language in Senator Fowler's legislation which seeks to apply the standard use for constructing highways to all federal agencies. When they fail to reach an agreement with the appropriate parties, and that is that if historic resources are to be adversely affected, the federal agency must accept the comments of the Advisory Council on Historic Preservation unless the federal agency can show that implementing the comments is not feasible and prudent.

We also agree with the delegation of authority to the state and certified local governments to carry out the provisions of the Preservation Act with fair compensation and an appropriate appeals process. We support the inclusion of the state preservation officers in consultation with the Advisory Council since the preservation officers have a substantial equity position in running the federal program. We also strongly endorse the introduction of a tribal historic preservation program.

The development of a National Center for Preservation Technology is another way for improving the science of restoration and rehabilitation.

Finally, I would like to highlight an item of the utmost importance, not only to preservation, but to the future of our country, heritage education. The purpose of such a program is to emphasize the local community which surrounds school children and to teach them about its traditions and each child's relationship to that local culture. We believe that citizenship and loyalty are developed through understanding and participation in our immediate cultural environment, upon which state, national and international understanding may be built. It is my personal belief that institution of a broad-based heritage education curriculum in kindergarten through twelfth grade would have a profound effect on the graduates of our school system. And, in fact, Savannah has an excellent such program. Funds should be authorized for such a program through state preservation offices and to the National Trust for Historic Preservation's grants and subgrants.

On behalf of the Georgia Trust and Preservation Action, I would like to thank you again, Senator Conrad and Senator Fowler, for the opportunity to testify and for your interest and commitment in coming here today. And also for the Chairman and the entire Subcommittee on Public Lands, National Parks and Forests. Thank you.

[The prepared statement of Mr. Paxton follows:]

TESTIMONY GREGORY B. PAXTON
EXECUTIVE DIRECTOR OF THE GEORGIA TRUST FOR HISTORIC PRESERVATION
AND
CHAIRMAN EMERITUS OF PRESERVATION ACTION
BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, SUBCOMMITTEE ON NATIONAL PARKS, PUBLIC LANDS AND FORESTS
EICHBERG HALL, SAVANNAH, GEORGIA
MAY 19, 1990

Mr. Chairman and Members of the Committee:

I am executive director of the Georgia Trust for Historic Preservation and chairman emeritus of Preservation Action, and will be testifying for both organizations today. The Georgia Trust is a 7,000 member independent statewide non-profit organization dedicated to the preservation and enhancement of Georgia's cultural resources, particularly the built environment. Preservation Action is the national citizens lobby for historic preservation based in Washington, D.C.

The preservation community is comprised of several different sub-communities including; the National Park Service; the Advisory Council on Historic Preservation; the National Conference of State Historic Preservation Officers; the National Alliance of (local) Historic Preservation Commissions; the National Trust for Historic Preservation; a network of unaffiliated local non-profit organizations (we have more than 400 history-related organizations in Georgia); the National Alliance of Statewide (non-profit) Preservation Organizations; the private sector; and professionals including architects and archaeologists and others. All these groups are represented on the board of Preservation Action, and on the National Preservation Coordinating Council, a body which fosters communication and seeks consensus on preservation issues.

I have delineated this list to articulate the complexity of the organization of the field of historic preservation. Change in the preservation law requires broad ranging consideration. Over the last three years, spurred by the state preservation officers, such consideration has produced consensus ~~was reached~~ on a large number of elements in the two bills introduced by Senator Fowler a year ago. The elements that I will discuss are included in that consensus package.

First, a word of appreciation for Senator Fowler's interests in advancing historic preservation law. Never in the history of the preservation movement has an elected official and his staff worked so hard to seek to completely understand the needs of the field and to amend existing law to address these needs. Georgia is proud to have a Senator and staff, particularly Bill Johnstone, who so ably represent the interests of our constituency.

Funding is the greatest need in preservation today. While the federal deficit is of grave concern to us all, the $34,000,000 recommended in the President's budget is simply too little to provide for the most basic needs of a national program with 59 state and territorial offices. Most of the public funding for the federal program comes from state and local governments, with federal dollars at about half the level reached in the 1970's when the movement was still a fledgling. This is less than 25% in constant dollars. Inadequate funding at the $34 million level will result in the loss of our national heritage. We recognize the difficulty of establishing trust funds, but if the commitment to preserve our national heritage is not permanent, neither will be that heritage. This year we are asking Congress for $61,000,000 to fund this program through the Historic Preservation Fund.

We also remain concerned about the historic rehabilitation tax credits, which were an enormously effective tool suddenly made ineffective by tax law changes in 1986. We hope that the amendments approved by the House Ways and Means Committee and the full House and the Senate Finance Committee last year will be a part of tax law changes.

A third major concern is for protection of historic and archaeological resources. The current National Historic Preservation Act provides little protection for these resources. Protection at the local level through historic preservation commissions, or at the state level, does not address federal projects. More protection is offered through the National Highway Act and through the Army Corps of Engineers permitting process than through preservation law.

In Georgia, just 75 miles south of Savannah is the 1736 site of

Fort Frederica, established just three years after the founding of Georgia, and responsible for the southern boundary of the thirteen original colonies. Although Fort Frederica has been a national park since 1948 and hosts over 300,000 visitors annually, the construction of a large scale marina immediately adjacent on public waters has been slowed only by the Army Corps' permitting process. This site is on the National Trust's list of eleven most endangered properties in the country. In particular we support the language of Senator Fowler's legislation which seeks to apply the standard used for constructing highways to all federal agencies when they fail to reach agreement with the appropriate parties; that is, if historic resources are to be adversely affected, the federal agency must accept the comments of the Advisory Council on Historic Preservation unless they can prove that implement~~ed~~ing the comments ~~are~~ is not feasible and prudent.

We agree with the delegation of authority to state and Certified Local Governments to carry out the provisions of the Preservation Act, with fair compensation and an appropriate appeals process We support the inclusion of the state preservation officers in the consultation process with the Advisory Council since the states have a substantial equity position in the running of the federal program. We also strongly endorse the introduction of a tribal historic preservation program.

The development of a National Center for Preservation Technology is another excellent provision to aid both in improving the science of restoration and rehabilitation and in bringing down the cost through technological innovation. [As an example, the application of epoxies to decayed wood or crumbling plaster is frequently a cheaper alternative to removing beams or replacing ornamental ceilings. Often this is the only way to preserve original fabric.]

Finally I would like to highlight an item of the utmost importance not only to preservation, but to the future of our country: heritage education. The purpose of such a program is to emphasize the local community which surrounds school children, and to teach them about its traditions and about each child's relationship to that local culture. We believe that citizenship and loyalty are developed through understanding and participation in our immediate cultural environment, upon which state, national and international understanding may be built. It is my personal belief that institution of a broad- based heritage education curriculum in kindergarten through twelfth grade would have a profound effect on the graduates of our school systems. Funds should be authorized for such a program through state preservation offices and the National Trust for Historic Preservation's grants and sub-grants.

On behalf of the Georgia Trust and Preservation Action I would like to thank you Senator Conrad and Senator Fowler for the opportunity to testify, and for your interest and commitment in taking your time to come to Georgia and for the interest of the Chairman and the entire Subcommittee on Public Lands, National Parks and Forests in scheduling this hearing today.

Senator CONRAD. Thank you very much for that excellent testimony.

Again, thank you, Mayor, for being here this morning. We very much appreciate it.

Next, we will hear from Nancy Tinker of Georgians for Preservation Action. Welcome.

STATEMENT OF NANCY TINKER, EXECUTIVE DIRECTOR, THOMASVILLE LANDMARKS, INC. AND CHAIRMAN, GEORGIANS FOR PRESERVATION ACTION

Ms. TINKER. Thank you. I appreciate the opportunity to speak with you this morning.

Senator FOWLER. Speak into the microphone.

Ms. TINKER. Is this better? I am Nancy Tinker, Executive Director of Thomasville Landmarks in Thomasville, Georgia and current Chairman of Georgians for Preservation Action. I would like to speak with you this morning about historic preservation and advocacy for historic preservation on the local level.

In order for preservation to be successful, at least to the small southern Georgia towns, you have to tie it in with economic vitality. And for communities such as Fitzgerald, Valdosta, Tifton or Thomasville, economic vitality ties directly with the community's future. These communities have a very strong commitment to revitalizing depressed central business districts, which, in turn, has drawn industry, developed tourism and spurred revitalization of surrounding neighborhoods.

Before coming to work for Landmarks, I worked for a number of years as a preservation planner with the South Georgia Regional Development Center in Valdosta. My area covered ten counties, and my two program areas dealt mainly with the Mainstreet program and with—I forgot my place. I will talk first about the Mainstreet program.

The city of Valdosta, in 1985, became involved with that program area. And in a nine-block area, it expended $3 million in restoring historic properties in their downtown. That success has continued. Within the last year or so, they have gotten involved with reinvesting again in their downtown and are building a multi-million dollar public health facility in a portion of the downtown area which has not experienced that kind of development since the city's inception.

The city of Tifton has experienced a similar kind of thing when they, too, became involved with the Mainstreet program. The Myon Hotel, a 42,000 square foot building which stands in the middle of their downtown area, stood derelict for a number of years. By combining forces with the city and by utilizing the historic tax credits, they rehabilitated this building until it is once again contributing to the downtown area. A building which had not contributed to the tax base in over 25 years is now housing City Hall, restaurants, residential and retail spaces.

This kind of success has prompted businesses which are located in Tifton's mall to leave the mall and move back downtown. Today, you will find there are virtually no vacancies in downtown Tifton. Basement, second and third floor spaces are also completely filled.

While working for the RDC in Valdosta, I learned several things. First, I learned that there are two Georgias. The second thing I learned was preservation needs are the same, both above and below the fall line. The difference below the fall line is that there are fewer people to provide expertise for cities which are asking for direction in terms of preservation. For places like Pelham, Cairo, communities like that, they have needs for preservation principles. They want national register nominations. They want help with the tax credit system. And sometimes, there is simply no one to meet the needs. And so, these communities go wanting.

So far as the preservation planner positions are concerned, I think this is probably the single best tool supplied by the Historic Preservation Section in the Department of Natural Resources. But there again, there are some problems. Salaries vary widely from area to area, and preservation planners tend not to stay very long. They move into other positions. There needs to be reinforcement in terms of salary. We also need to fill all 18 of the Regional Development Centers with preservation planners.

I think that Georgia's preservation program is very successful. I am very proud of our accomplishments. But, I think we need reinforcement. And in order to be more successful, that reinforcement needs to come from the top. Thank you.

[The prepared statement of Ms. Tinker follows:]

Thomasville Landmarks, Inc.

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I am Nancy Tinker, Executive Director of Thomasville Landmarks in Thomasville, Georgia and current chairman of Georgians for Preservation Action. I would like to speak with you today about advocating historic preservation on the local level.

Enonomic vitality is important to every community. Reinvestment in any given community's building stock is to invest in that community's future. Cities such as Fitzgerald, Valdosta, Tifton, and Thomasville, Georgia are all involved in preservation programs. Their committment to revitalizing depressed central business districts has drawn industry, developed tourism, and spurred revitalization to surrounding neighborhoods.

In 1985, the City of Valdosta, under the direction of the city's Main Street Program, expended three million dollars in rehabilitating historic properties within Valdosta's nine block central business district. This investment of private dollars was made possible through the three tier historic preservation tax credits. The city of Tifton has shared a similar experience with the restoration of the Myon Hotel, a 42,000 square foot building which stood derelict for years before the city and a local developer combined forces successfully rehabilitating the building for residential, retail and municipal space again. The combined energies of the Main Street program and three tiered historic tax credits brought new life to a decaying downtown. Today, downtown Tifton has virtually no vacancies with basement and second and third floor spaces filled to capacity. This success has prompted several business to abandon their mall locations and move back downtown.

A second preservation tool utilized by these communities is the preservation planning program directed by the Georgia Department of Natural Resources Historic Preservation Section. Preservation planners are housed in the Regional Development Centers and meet preservation needs in their individual regions.

Before coming to work for Landmarks, I worked for a number of years as a preservation planner for the South Georgia Regional Development Center in Valdosta. In my time as a planner, I learned several things. The first, was their definitely are two Georgians. The second, was that whether you lived north or south of the fall line, preservation needs were identical. The entity which made the difference was whether or not the regions Regional Development Centers employed a preservation planner who provided expertise and direction for communities desiring this level of professionalism.

Within this program salaries vary widely with most planners taking other positions in a few year's time. Financial support is necessary to stabilize and promote a program whose budget is decreasing and whose presence is felt in eleven of eighteen Regional Development Centers. Preservation needs identified in Cairo and Pelham Georgia are as viable as those identified in Macon. In Cairo and Pelham, however, there is no one on staff to respond.

The majority of preservation programs succeed because local people unite to achieve a common goal. This truly is a case of teaching local people to help themselves by investing local dollars in local markets. This is advocacy of the best kind.

But the movement needs reinforcement. The two tiered historic tax credit system has greatly slowed the number of building's experiencing rehabilitation. The austerity budget experienced by Georgin's Department of Natural Resouces has delayed implementing the State's investment tax credit for historic properties. Georgians For Preservation action is working to assess our state's preservation needs and present them to the Georgia General Assembly.

Historic preservation is working in Georgia. But funding and reinforcement for local efforts are needed from the top.

Senator **Conrad**. Thank you very much. Next, we will hear from Mr. Dwight Kirkland of the Society for Georgia Archaeology. It is good to have you here and would you proceed.

STATEMENT OF DWIGHT KIRKLAND, SOCIETY FOR GEORGIA ARCHAEOLOGY

Mr. **Kirkland**. First of all, I would like to thank both of you Senators for an invitation to speak at this hearing. I would like to begin first by giving yourselves sort of-a background of our organization and for the benefit of the other attendees here.

The Society for Georgia Archaeology is composed of about 300 professional and non-professional archaeologists in Georgia. It is the oldest and largest such organization in Georgia, and we have nine regional chapters. It was founded in the late 1930's by a group of eccentric Macon gentlemen who were instrumental in the development of the Ocmulgee National Monument there at Macon.

Okay, as the voice of the Society for Georgia Archaeology, it is my pleasure to express our support for the two historic preservation bills that Senator Fowler recently introduced in Congress. Both are bold and innovative pieces of legislation.

We of the SGA believe that the Historic Preservation Administration Act will provide a more efficient implement of national preservation policy and better coordinate the efforts of federal, state, local and private agencies and organizations. The resulting independent agency provided for in the Act whose sole purpose is preservation policy is long overdue.

The creation of the National Center for Preservation Technology is applauded and should provide better transfer of technologies related to preservation.

We also agree with most of the provisions in the National Preservation Policy Act, although we are cautious of some. Although we do not disagree with that portion of Section 121 which provides for establishment of a new Government sponsored registration of antiquities program to encourage the conduct of scientifically valid excavations, we are cautious of that portion which will endeavor to create a potential market incentive in favor of certified antiquities. Any market for antiquities creates hazards for archaeological resources.

The SGA is also concerned about Section 120 which provides for federal policy on the reburial of human remains and grave associated artifacts, which gives priorities to the wishes of living descendants. The key point here is that we believe only descendants that can prove with reasonable evidence direct lineage should be allowed a voice in the reburial of archaeological resources. And each situation should be considered on a case-by-case basis.

Even though not perfect, from our viewpoint, we believe that these two bills represent the best compromise for all parties involved. They are certainly the most desirable pieces of legislation currently being considered by Congress. Therefore, we add our support for their passage. Thank you.

Senator **Conrad**. Thank you. We very much appreciate all of the participation by this panel. Maybe I could start with a question for Mr. Kirkland. You made the statement that the provisions of the bill which call for an independent agency are long overdue. Could you just give us your feeling as to why that is important?

Mr. **KIRKLAND**. Well, my own feeling is that, you know, the present situation where it has been split between the National Park Service and the other board that you refer to here. Any time that you have one agency whose sole responsibility and concern is historic preservation, it is bound to be better all the way down the road for historic preservationists because, you know, then the efforts could be much better coordinated from the top.

Senator **CONRAD**. All right. Let me ask you specifically about archaeological provisions. We have found in some parts of the country that the requirements for archaeological work before preservation can be pursued have become extraordinarily expensive and, in some cases, so onerous that preservation gets stymied. What is your reaction? What are the things that need to be done to make certain that the archaeological values are preserved and at the same time, we could do it in a cost-effective way that does not endanger projects completely? How do we achieve that kind of balance?

Mr. **KIRKLAND**. First, before I answer that question, I would like to let you know that I am a non- professional archaeologist. And so, a lot of the expenses that are involved in professional archaeology, I am just not qualified to answer a question based on that.

From a personal viewpoint and being a non- professional, I have seen at times, that in my view, professional archaeology could be done more efficiently. That is a personal viewpoint and not a viewpoint of the SGA because I naturally need to represent those interests of the professional archaeologist as well.

It is not an easy question to answer because as you know, as archaeology begins, you never know what you are going to run into when you start. And even though you may have an estimate for the costs of a specific project, if you get into that project and you find unexpected things coming up, then that can certainly elevate the costs of such a project. And in a lot of cases, I would say that this may be the situation that you get into.

As archaeologists, particularly if you are using, say, the direct historical approach where you have a record, we know from archaeology that the historic record is not always accurate. And so, in many cases, when archaeologists begin a project, say, on a historic structure or something of this nature, you do not always find what you are supposed to find.

Senator **CONRAD**. We just have a project in my state, and that is precisely what has happened. You know, what you anticipate is not necessarily what you encounter. And as you move through the project, all of a sudden, those expenses start to take a greater and greater share of what was budgeted for the overall historic preservation effort. And pretty soon, the whole project is endangered. And it is a very difficult balance to attempt to strike.

Mr. Paxton, if I might ask you, in the legislation that has been offered by Senator Fowler, there is a transfer of authority from the Park Service to the Advisory Councils, and you talked about the importance of that and the value of that. I would just be interested for a moment if you could reflect on why that is important in your judgment.

Mr. PAXTON. I think the Advisory Council, as an entity as it exists now, offers a kind of a consensus board in and of itself. In essence, it is composed of the secretaries or the representatives of a number of federal departments. And the notion of having that kind of consultation go on provides a kind of ability for different agencies to come together to speak their piece and to try to come up with a solution that is a reasonable one. And I guess my feeling is that it is very important for there to be a continuation of that kind of mediated discussion.

But the problem with the discussion at the current time is having had it, the Advisory Council can only make a recommendation, and that recommendation, in fact, can be ignored by the federal agency involved—completely ignored. And increasingly, that seems to be what is done at that time. And, so we would like to see some teeth in that so that, in fact, federal dollars for preservation are not counteracted by federal projects—federally funded projects that undermine preservation.

Senator CONRAD. All right. Doctor Lyon, we had a chance to visit before the formal hearing started, and I enjoyed our conversation very much. As we were visiting, I was interested in your observation. Looking over this legislative proposal, actually, two bills that have been put forth by Senator Fowler, what do you see as the most important thing as you meet your responsibilities day to day? What are the things that are most frustrating to you with respect to federal law? What are the things that are standing in the way as you go about your daily activity?

Dr. LYON. That is a difficult question in some ways. One of the most frustrating things that I and the other State Historic Preservation Officers have met is this growing administrative and paperwork—just no other name for it—burden that has come out as regulations have been developed for how we administer the program. We have just been through a program review in which four or five people spent a whole week in our office looking at what we do, and which we prepared mountains of paper to send off to satisfy the federal agency, the Park Service, in this case, that we were carrying out a competent program. So, I think the provision for a greater delegation of authority and responsibility, so long as it does not come with all of that other stuff attached to it is one of the things that we need.

We do appreciate a greater focus. We do believe that a greater focus and concentration of administration is desirable. The provision—well, there are a number—every provision that is there, I think, will strengthen our ability to operate. That is a particular problem that the state officers have met.

The Advisory Council process that Greg Paxton referred to is often a frustrating one for the very reasons that he cites. And to have a little tougher standard in there that has to be met can do nothing but help, I believe.

The provision for heritage education is important because in the past, many states—we have not had as much trouble here—but many states have had a problem being able to spend their federal dollars on educational projects and justify it to the funding agency. And so, by having this picked out, I think, would be important.

And I also think the provisions for the compromises that Dwight referred to for archaeological issues would be of assistance to us as well. So, I really support several of those futures.

Senator FOWLER. May I interrupt on that point, Dr. Lyon. I think it would be helpful if you would strive for resource needs or identify gaps between what you have at hand in the Georgia office and the needs you documented in Georgia's preservation plan.

Dr. LYON. Well, you are referring to our recently completed five-year plan in which we laid out objectives and goals for the future. The biggest need, Senator Fowler, is funding, adequate funding. And I do believe that the way the program is set up, that it is required to be matched at least 50 percent in non-federal funds.

Senator FOWLER. Does it have any number on that five-year plan?

Dr. LYON. In Georgia?

Senator FOWLER. In Georgia.

Dr. LYON. We did a survey a couple of years ago—not a very scientific survey, but we sent out a mailing and said, "Tell us what your needs are." That came up to some $53 million in restoration money for the rehabilitation of historic properties. That is one figure. I do not have the exact figures here, but each year, whenever we have applications for that little bit of survey and planning money that we have, the amount—I think the application amount was something—we had $60,000 to fund some $250,000 worth of requests. That is the kind of gap that there is.

Senator CONRAD. Of the $53 million figure, how much is available?

Dr. LYON. Zero.

Senator CONRAD. Zero.

Dr. LYON. For rehabilitation—for actual——

Senator CONRAD. Well, I tell you what—Old Bridge Fowler here has proved himself quite able to persuade his colleagues when he sees the need.

Senator FOWLER. Do not go too far. [Laughter.]

Dr. LYON. Well, as Greg points out to me, that was one year's figures. And——

Senator FOWLER. One year's figures just on preservation.

Dr. LYON. Actually, Greg may want to answer that question because we have got a state needs assessment thing going on right now.

Senator FOWLER. Please.

Mr. PAXTON. In looking at the projects all separately—different projects over a couple of years, it is actually almost $100 million. It is a little bit short of $100 million as our current need, and we project some $350 million over the next ten years as the total rehabilitation need.

Senator CONRAD. That $100 million relates to what time period?

Mr. PAXTON. The $100 million is immediate.

Senator CONRAD. Immediate.

Mr. PAXTON. Yes. And these are specific rehabilitation projects and there are no federal funds now specifically for rehabilitation projects. This is not acquisition of parks or any management funds. All of that is bricks and mortar money for rehabilitation.

Senator **Conrad**. You know, this same thing repeats itself over and over, does it not, Wyche, across the country? I mean, what we are seeing is that there is an enormous increase in interest in historic preservation. When people go to an area as tourists, the thing that they are interested in is the history of that area. They are interested in going to things and seeing what was, what happened in the past? How does this tie into what is happening today? People are seeking an understanding of their history. And the increase in the interest is absolutely dramatic, and that requires more resources. And, of course, resources are not currently available. And that is really one of the great challenges that we face, and I think perhaps the greatest strength of Senator Fowler's bills is that it does focus attention on an area in which there is really great interest.

Ms. Tinker, I heard you talk about Valdosta, and I hope I am pronouncing that correctly—Valdosta.

Senator **Fowler**. You even got all three syllables out.

Senator **Conrad**. A $3 million project there, did I understand that correctly?

Ms. **Tinker**. No, that was throughout the downtown area.

Senator **Conrad**. Throughout the downtown area—$3 million. And what was the source of the funding for that, do you know?

Ms. **Tinker**. Every penny of that was private. There was not a——

Senator **Conrad**. All of that was private?

Ms. **Tinker**. Right.

Dr. **Lyon**. But, there were tax credits used, I believe.

Ms. **Tinker**. They were utilizing the three-tier investment tax credit program. And I would like to point out since that system has been changed and they have gone to two tiers, rehabilitation has drastically slowed within—well, throughout the state.

Senator **Conrad**. Yes, we see that in our state as well. In fact, it is virtually halted.

Senator Fowler, any additional questions?

Senator **Fowler**. Nancy and Greg, I was pleased with the emphasis that you put on the national trust efforts in rural areas. In fact, I am going to Pelham this afternoon for another reason. They are dedicating a new recreation facility that they built fighting drugs. And a number of us have been encouraging them to do a little dedication. In fact, I am also going to talk to some of the people while I am there on the preservation efforts.

But, just to follow up, it seems like a basic question, and Nancy, you are one of the best to tell us—with this interest that has grown over the last several years and in your work in Valdosta and work in Tifton, how best do we get people, young and old, all levels of society interested in preservation? I have in one of my bills, as both of you noted—educational efforts in schools, but I want your ideas beyond that or below that or around that. How do we keep it going so that does translate into money?

Ms. **Tinker**. I would like to preface my remarks with a little background information. When I was working with Tifton and Valdosta in getting them involved in the Mainstreet program, there was absolutely no interest—zero. Until I got them in the car and drove them to Thomasville and let them see what was going on there. I think education is the key. And if show-and-tell is the best way to do that, then you get to agree to go to another community where they have been successful and let them actually see what is possible in a city that they can relate to.

Needs of the Chambers of Commerce to provide more funding for the preservation planners because that puts expertise on the local level and it gives them somebody to hold their hand as they go into ground that they are—they have never crossed. And they are a little afraid of a new process. And if you give them a name and a face that they become familiar with, then you can use them to help sell preservation principles.

Senator FOWLER. Greg, can you expand on that, on the specific efforts made by the national trust in rural efforts? What is being done now and what we can do together? Expand on that.

Mr. PAXTON. Yes, well, I want to second Nancy's comments on heritage education. We are just starting a program in that area in Georgia as well, and there are many areas, we've mentioned, that have already done it. We think that offers the future hope and we think it should be broad based so what you are attempting to do is draw in the culture—the various cultures that make up our country and educate all of the students as to how they relate to that. And I think, ultimately, what you will be doing is providing a community context for every child. I think that is part of our goal.

There also is an emphasis on rural education, and I know your friend, Tennessee Spalding, is chairing the Rural Resources Committee of the Georgia Trust. And this activity is important because so many rural areas are losing population. And there is a number of approaches that can be used, such as encouraging second homes in some rural areas because people who have moved to the city are looking for a retreat in the country. And the tax code allows for that as well. So, we are trying to encourage that through our new revolving fund as well. So, there are a number of techniques that are being used.

Senator FOWLER. I want to thank, Mr. Chairman—just a couple of other quick questions. I want to thank all of these panelists. Certainly, Doctor Lyon and her wise counsel, during all of my preservation efforts; Greg Paxton for his specific help at the national level which is continuing and ongoing; not only teaching me, but helping coordinate the various preservation efforts.

Nancy Tinker was kind enough at Thomasville to host a reception for me where we brought all the crowd together for a little brainstorming. She could have testified for a long time about what preservation has done to Thomasville and making it a showcase city.

And Mr. Kirkland, let me—there are two things especially I want to get out of you. That was not meant to sound as harsh as it came out. You can discuss them if you want to, but when you go back to your organization, we have two problems that are going to come up in this legislation; after you talk to some of your colleagues, both professional and non-professional, one is the subject of looting of archaeological resources. I would like sort of an update on what is happening in Georgia and how widespread the problem is and what we can do to prevent or at least minimize it.

And then a real big problem with some of my colleagues on the committee that are going to have to vote on this legislation, any specific ideas that you and your organization might have in encouraging the preservation of archaeological resources on private lands with respect to private land holding rights. But, as I am sure you could testify to, more and more of our discoveries are on private land and oftentimes they are exploited for commercial purposes or even sometimes when the archaeological and historic value is not known, they are destroyed before professionals can come and tell them what a find this is and what a treasure this is.

I would be glad to hear any comments right now. But especially, on how are we consistent with private property rights to protect archaeological finds on private property. I would appreciate any time in the next few weeks when your organization meets, to have those specific comments in writing.

Mr. Kirkland. If I might, I would like to just briefly address. Now, this falls under—the private property area falls under an area which I have some expertise in. In most situations in Georgia right now, most of the concerns that I had addressed in my statement really are addressed in what you just said.

A prime situation of where we have had a site that was absolutely destroyed within the past year in Georgia which really should have been preserved was finally and totally excavated and documented by volunteers and non-professional people. It was a site near Hartford, Georgia which was, in my view, another one of the classic earth lodge mounds that, if you visited the Macon site, it was there. And I would have really liked to have seen that site saved. It was on private property. There was no way that any federal or state guidelines could have saved it.

I would like to see some system set up whereby there could be funding available for the purchase of sites such as this one. Right now, I am currently working on a site in south Georgia that was absolutely and totally decimated by the plow of a plantation operation. And this site dates back 2,000 years and it covers 300 acres, and it is absolutely and totally jumbled up in a mess right now. And there is very little——

Senator Fowler. That land owner did not know, had no idea?

Mr. Kirkland. And it goes back to what the other panel members were talking about. Education is the key. When local people find out that you are an archaeologist and, you know, you are constantly asked to come and address various civic groups or schools. And I address a lot of—particularly, I like to go into high schools and grammar schools to talk to young people. Well, the first things I often do if I am addressing, say, history class or social studies classes, I look at the textbook to see how much is mentioned in there, particularly about the American Indian. And in most cases, there is only one line, one sentence, one paragraph if you are lucky.

And the key is education. A lot of people are destroying archaeological sites. And here, I am talking in terms of prehistoric archaeological sites because in historic properties, a building is something easy to see. You know that is a historic structure. But an archaeological site, in a lot of cases, you do not even recognize it until it is destroyed. And so, to me, to save our archaeological—prehistoric archaeological properties and resources, the key has to be education and it has to come early in the grade school level.

Senator **Fowler**. Amen. Thank you, Brother Kirkland, to all this panel, Mr. Chairman. Of course, we invite you to stay if you can while we hear from our other panel and keep the conversation going.

Senator **Conrad**. Very good. Let me just add my thanks as well. This first panel has been excellent. Next, we will turn to our second panel and begin with Stephanie Churchill of the Historic Savannah Foundation. It is good to have you here.

STATEMENT OF STEPHANIE CHURCHILL, EXECUTIVE DIRECTOR, HISTORIC SAVANNAH FOUNDATION

Ms. **Churchill**. It is indeed very appropriate that this hearing take place in Savannah today, and we are very pleased to welcome you here.

On behalf of Historic Savannah Foundation, a private local preservation organization, I would like to express our deep appreciation to you, Senator Conrad, for making it possible for this hearing to take place.

We are most grateful to Senator Fowler for listening over the years to the deep concerns expressed by the preservation community at the local, state and national level. Because of Senator Fowler's recognition of these concerns and his response in introducing his historic preservation bill, he is bringing much-needed attention to a problem of truly desperate concern.

I would like to speak today from the standpoint of a local preservation organization in a city with a heritage 217 years old. I would like to give you some examples of the specific tools our cities need to carry out what Senator Fowler's bills envision to enable us to preserve our resources.

The first one is funding. The adequate annual appropriation to carry out the Historic Preservation Act. Beginning with the revitalization efforts of 1960, Savannah went through a tremendous burst of restoration, and it was known all over the country. In this national Landmark Historic District and its adjacent Victorian Districts, literally thousands of buildings were rescued and restored for productive use. Our beautiful squares and parks were restored. Our riverfront was rebuilt.

While this restoration effort happily resulted in a tourism industry of some $450 million a year, the really important point is that in our beautiful city, much of its historic buildings were saved for us to live in, work in and to enjoy.

The point is that the sparkplug for all of this activity then was the availability of the state and federal matching funds which were combined with local, public and private monies to make this happen.

Beginning in 1980, however, these resources dried up. Year after year, historic preservation was zeroed out of the Administration's budget. The result can be seen here in Savannah, as in other cities around the country. Restoration activity has slowed almost to a stop. The sparkplug of these matching grants is desperately needed before our buildings are lost to neglect, to expedience or to the bulldozer.

We are delighted to see that for the first time in nine years, the President's Budget this year includes an appropriation for the Historic Preservation Fund of almost $34 million.

That is marvelous, and we are very grateful for the Administration's support at this level. But, we urgently request your support of a preservation funding for this year in the amount of $61 million, including the vitally important $20 million for the bricks and mortar grants that we are missing.

The second point I would like to discuss is the rehabilitation tax credits. As the Mayor has mentioned, preservation and economic development worked very well in Savannah during the period that the federal tax credits for rehabilitation of historic structures were available. With the amendments in 1986, however, this activity is virtually ceased. I believe it has dropped 50 percent in the state.

Dr. LYON. In the country, we have done a little better than in Georgia.

Ms. CHURCHILL. As Mayor Rousakis mentioned, the city of Savannah has documented an immediate need for some 4,000 dwelling units for people of low and moderate income. Savannah has blocks filled with vacant and neglected buildings needing rehabilitation. This is a tremendous potential resource to fill this housing need. Lacking the preservation funding and the tax credits, however, little is likely to happen here to meet this need.

Therefore, we request your support for the Community Reinvestment Tax Act to revive the tax credits as a preservation and economic development tool.

The third point I would like to talk about is that of protection. Saving landmarks from the adverse effects of federally funded projects. At present, federal law requires that federally funded projects which may negatively impact a nationally significant historic or architectural resource submit to a Section 106 review by the Advisory Council on Historic Preservation. Present law generally assures that the review will take place, but it does not assure, as Mr. Paxton has mentioned, that the landmark will be protected.

For Savannah, this is particularly pertinent right now, and we see a very important point in Senator Fowler's bill in relation to the Advisory Council and the Section 106 review process.

The Harry S Truman Parkway, which is planned to be constructed here, has actually started, will be partially funded with federal funds. The northern terminus of the Parkway will exit directly into our National Historic Landmark District right here, posing a potentially enormous threat to our buildings, our trees and the quality of life for all of us who live here and work here. In fact, it could virtually cut this Historic District in half.

However, it works out because all of us live and work so closely in this Historic District, we will see the results of this Section 106 review process literally on our doorstep.

Therefore, we are very pleased to see that among the many favorable provisions, Senator Fowler's bill clearly spells out federal agency preservation responsibility and provides that the agency must implement the Advisory Council's recommendation, unless the agency proves the recommendation is not feasible and prudent.

This provides a much higher standard of preservation responsibility for federal agencies.

In conclusion, again, speaking as a local preservation organization in one of our cities, I would like to ask you to assure us these tools that I have mentioned, the funding, the protection and the tax credits to preserve our historic buildings and environments.

Thank you for allowing me to speak, and thank you for coming to Savannah.

[The prepared statement of Ms. Churchill follows:]

Historic Savannah Foundation

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TESTIMONY OF STEPHANIE CHURCHILL
EXECUTIVE DIRECTOR OF HISTORIC SAVANNAH FOUNDATION
BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS, AND FORESTS
EICHBERG HALL, SAVANNAH, GEORGIA
May 19, 1990

Mr. Chairman and members of the committee:

It is very appropriate that this hearing be convened today in Savannah, as this is a city which has stood for many years as a national leader in historic preservation.

On behalf of Historic Savannah Foundation, a private community-based preservation organization of 1,400 members, I would like to express our deep appreciation to Senator Conrad for his kindness in making it possible for this hearing to take place.

We are most grateful to Senator Fowler for listening to the deep concerns expressed by the preservtion community -- at local, state, and national levels -- over the past several years. Because of Senator Fowler's recognition of these concerns and his response in introducing his historic preservation bills, he is bringing much-needed attention to a problem of truly desperate concern:

- here in Savannah, here in Georgia, here in the United States, we are in danger of losing our heritage, our architectural and cultural past -- through lack of understanding, lack of funding, lack of protection; once demolished, ripped out, or paved over, this heritage cannot be retrieved.

- to solve this problem, we need new tools, new resources: truly adequate funding for preservation and truly responsible and responsive protection meansures.

Over the years, through succeeding administrations (on a federal, state, and local level), those of us concerned with the preservation of historic, architectural, and cultural assets have struggled to garner legal support and financial resources to assure the retention of these assets.

However, through succeeding administrations, the focus on and support of preservation has varied, wavered, and -- at times -- almost vanished.

Rather than simply watch buildings be demolished, prehistoric sites looted, scenic vistas destroyed, the national preservation community has been working for several years to develop a framework for preservation on the federal level which will respond to the needs identified on all levels.

Senator Fowler recognized the urgent need for this framework and it is as the result of his concern that we are here today. Our comments today represent a consensus reached after several years' discussion and debate by diverse preservation interests.

Speaking from the standpoint of a local preservation organization in a city with a heritage 217 years old, may I give you some examples of what our cities need to preserve our resources.

A. FUNDING: ADEQUATE ANNUAL APPROPRIATIONS TO CARRY OUT THE HISTORIC PRESERVATION ACT

Beginning with the revitalization efforts of the 1960s, Savannah went through a tremendous burst of restoration activity for nearly 20 years. In this National Landmark Historic District and its adjacent Victorian District, literally thousands of buildings were rescued and restored for productive use. Our beautiful squares and parks were restored. Our riverfront was rebuilt.

While these restoration efforts happily resulted in a tourism industry for Savannah of some $450 million per year, the really important point is that much of this beautiful city, with its handsome buildings, was saved for us to live in, to work in, to enjoy.

The sparkplug for all this activity was the availability of federal and state funds, combined with local public and private monies.

Beginning in 1980, however, these resources dried up. Year after year, historic preservation was "zeroed out" of the Administration's budget. The result can be seen here in Savannah, as in other cities: restoration activity has slowed almost to a stop. The sparkplug of matching grants for individuals, for public agencies, and for non-profit groups and churches is desperately needed before our buildings are lost to neglect, to expedience, or to the bulldozer.

We, along with preservationists across the country, are delighted to see that, for the first time in 9 years, the President's Budget this year includes an appropriation for the Historic Preservation Fund, of $33.6 million.

While we are most grateful for Administration support at this level, Historic Savannah Foundation urgently requests your support of historic preservation funding for this year in the amount of $63.3 million:

- $50 million dollars to the states, including $20 million for the much-needed bricks-and- mortar grants;
- $9 million to the National Trust for Historic Preservation, including $900,000 for its Preservation Service Fund grant program; Historic Savannah Foundation has just received a grant from this fund which

will allow us to develop an important plan for this Historic District;
- $1 million for tribal preservation;
- $1 million for future emergency disaster relief;
- $2.238 million for the Advisory Council on Historic Preservation;
- $100,000 for US-ICOMOS.

B. REHABILITATION TAX CREDITS: BRINGING NEW LIFE TO DOWNTOWNS THROUGH AFFORDABLE HOUSING AND REVITALIZED MAIN STREETS

Preservation and economic development worked well as partners in Savannah with the federal tax credits for rehabilitation of historic structures. With the tax amendments of 1986, however, this activity has virtually ceased. In Georgia, private investment in rehabilitation has dropped from a high of $41.5 million in 1986 to $23.7 million in 1989.

The City of Savannah has documented an immediate need for some 4,000 low and moderate-income housing units. In its Victorian District and other neighborhoods, Savannah has blocks filled with vacant and neglected buildings needing rehabilitation -- a tremendous potential resource to fill the housing need. Lacking the preservation funding and the tax credits, however, little is likely to happen here to meet this need.

Historic Savannah Foundation urgently requests your support for the Community Reinvestment Tax Act to revive the tax credits as a preservation and economic development tool.

C. PROTECTION: SAVING LANDMARKS FROM ADVERSE EFFECTS OF FEDERALLY FUNDED PROJECTS

At present, federal law requires that federally-funded projects which may negatively impact a nationally significant historic or architectural resource submit to a Section 106 review by the Advisory Council on Historic Preservation. Present law generally assures that the review will take place but does not assure that the project will not go ahead as planned, nor that the significant resource will not be lost or damaged.

For Savannah, we see a particularly important point of Senator Fowler's bill in relation to the Advisory Council and the Section 106 review process.

The Harry S Truman Parkway, planned to be constructed here, will be partially funded with federal funds. The northern terminus of the Parkway will exit directly into our National Historic Landmark District, posing a potentially enormous threat to our buildings, our trees, our quality of life as residents -- it could virtually cut our Historic District in half.

Thus we are very pleased to see that, among many favorable provisions, Senator Fowler's bill clearly spells out federal agency preservation program responsibility, and provides that the agency must implement the Advisory Council's recommendation unless the agency proves the recommendation is not feasible and prudent. These provisions also penalize agencies which allow adverse actions to occur, by denying funds to a proposed project on the site.

D. CONCLUSION

In the President's Budget this year, OMB Director Richard Darman states,

> To the extent that investing in the future tends to emphasize technological advances -- as it should -- there is a need to assure a counterbalancing attention to aesthetic values ... to appreciation of history ... It includes the historic buildings and environments that dot our urban and rural landscapes and record our history ... The preservation, understanding, and passing on of the best of this heritage is essential if Americans are to know what it is to be "American."

Speaking for Savannah and for preservation in our nation's cities, Historic Savannah Foundation urges you to assure us the tools -- the funding and the protection -- to preserve our historic buildings and environments, "the best of [our] heritage," for now and for the future.

Senator CONRAD. Thank you very much for that excellent testimony. Next, we will hear from Mr. Leopold Adler of the Preservation Alliance. It is good to have you here.

Senator FOWLER. Senator, I have to interrupt you here. Mr. Adler happens to be my personal preservation mentor. No one individual, if you have to single out one, has done more of what you see in this town than Mr. Adler. And we are very pleased the President of the United States recognized that. He was one of ten Medal of Honor winners for community service and preservation recognized at the White House a few months ago. Just be careful. He will get in your pocket before you know it. [Laughter.]

Senator CONRAD. Very good. With that introduction, Mr. Adler, please proceed.

STATEMENT OF LEE ALDER, PRESERVATION ALLIANCE

Mr. ADLER. That is a fine introduction. Thank you, Wyche. Senator Fowler said when we all recognized his ability and his willingness to run for the Senate that—he addressed a group of us here in Savannah—he said, "You early supporters are going to get favors. The rest of you get good government." He certainly has done well for us—the bridge and everything else.

I think the bills are great, and we support them. The Preservation Alliance does, and I am sure you have had positive responses, Ms. Churchill has told you, from this community.

And the five things that are so necessary, Senator, are appropriations and the $61 million. We have not had enough money. As Senator Fowler has said, it cannot be done today by the private sector alone.

The second is the tax incentives. It was $8 billion done—preservation done from 1980 to 1986. I do not know what got into Mr. Rostenkowski, but I mean, it just changed everything. Savannah and New Orleans were two of the greatest cities that used the tax credits, and it was a great wound to us. So, tax incentives are terribly important.

The protection of properties are important because without that, there are people who do not care, who do not value it, who put their own personal interests above the interest of not only the local people, but the country. This is a national treasure. As you have seen, the urban plan of this city is exalted. It is unique not only in Savannah for Savannah, but the state of Georgia, but also the United States and the world.

Low income housing has been a passion because Savannah was very different in that the citizens—and it is hard to believe as you look at this beautiful city today—but the citizens of the city did not care about it in the 1940's and 50's. They left the suburbs, unlike Charleston. And so, there was no displacement, except the voluntary displacement of getting away from the inner city or black people or white people. They just fled. And when people were enticed to come back by this marvelous private preservation effort led by Historic Savannah Foundation, it was a middle-class operation, and it reclaimed the heart of the city.

The low-income housing took place in the Victorian district, and I want to talk about that in just a second. Or maybe let us do it now. It is a very tough thing to do today. And the reason it is tough is the federal government has gotten away from it. When we started working on it in the mid 70's, HUD was alive and vibrant and responsive.

The city as Mayor Rousakis called the displacement of people in the Victorian district—this marvelous 800 acre area which was largely low-income black renters—people who were marvelous housekeepers, people who valued their neighborhood, who did not want to be in antiseptic housing projects, who wanted to live there and live there for 30-40 years. He said it was his most vexing problem. And so, the city and an organization—again, a non-profit private organization went to HUD, and we got millions of dollars to help us house people of low income.

Today, we are—there is a 100-unit project going on in the historic district for low to moderate income. You cannot do low income anymore. And to give you an idea of the complexity of it, we are working with the national housing partnerships which was created by the Congress in 1968 as a full profit arm to do housing as a result of commission stuff. This is a $5 million project. A million and a half is coming through the city's fund, CVDG, again government; one and a half million is going is coming from a HODAD grant from HUD which we were lucky enough to get in before they closed that down; and one and a half million from the Ford Foundation that has stuck with us since we went to them and said, "Let's try to do something."

Now, in spite of that—so there is only a half a million dollars coming from the private sector, and that is coming through Fannie Mae selling low-income tax credits. And I do not want to discourage the low-income tax credits. That is the only thing there, but it is not enough. In spite of that, the rest will be $195-295. And the rest of the Victorian district—this is right next to the Victorian district—for the low income are $80-150, and that is one-third of that tenant's rent—income, rather, for rent, which is a very high percentage.

So, we have got to get back somehow, either through the preservation efforts or through the efforts of HUD, which was involved with preservation, back to doing low-income housing. We have a waiting list of 1,500 people, which cut off five years ago, and it is very discouraging that we cannot do more, particularly since this city—the private and the public sector have done things to try to do it.

To give you another idea also, which is rather shocking, in 1977, the Savannah Landmark, the National Endowment to the Arts and two organizations, one in Pittsburgh and one in Cincinnati, had a done low-income housing project, put on a conference. Four hundred people came from 38 states. Your state was represented. I am going to one in Rutgers next week at Newark so they can get in easily at the airport there. There are only 100 people. And, there is something wrong. I mean, we have gone to sleep. What will reawaken us, I do not know.

And the other—the fifth thing which Greg Paxton mentioned, and rightly so, is heritage preservation. And I hope you will get a chance to see the massive program. Frances Smith, who runs that brilliantly is here today. They are teaching in the public school system—not some group that is coming into the public school system, but the public school system is teaching 40,000 Chatham County school children about the architects, the city plan and the heritage of this city to make—it is building a constituency of preservation. They cannot do it alone, but it certainly makes the citizens aware of what they have. It is a wonderful, wonderful program.

So, Savannah was saved in the early part of the last part of the century, in the 50's, as a private effort. This was pre-Rousakis, by the way. I wish he was here to hear that. No government, no business—very little business. I thought your questions were very piercing about "Does it conflict with economic development?" Well, the Chamber of Commerce had to be dragged in screaming to this thing, and they have done a good job, and as Ms. Churchill has told you, there was less than $100,000 worth of tourism here in 1955. There is now, according to their records, 430 million. I think there is a little less than that because they are counting every relative that comes to visit them.

But, there was no government, no business, and really, today, the economic development all over the city does not think of tourism as an industry which they should be involved in. And let me give you an example. There is a lady here today, Mrs. Oxford, who is head of the Lucas Theater effort to preserve a marvelous theater built in 1926, and it is a brilliant theater—can do everything performing arts. Savannah—downtown Savannah, is spite of its great preservation movement, has no theater in downtown. They have all moved out. I got to go seven miles to see "Pretty Woman" or whatever the latest thing is. And if you do not like it, you have a heck of a seven miles back, you know.

But anyway, there were seven theaters, and this theater is trying to raise three and a half million dollars and having a hard time doing it. They are having a brilliant party tonight from 6:00 to 12:00, and I am sure there are going to be thousands of people there. The citizens want it. But where do you get the money? How do you do it? And I think that the preservationists have proven that they are ecstatically driven motives have done—raised lots of private funds, but as Senator Fowler has said, you cannot do it alone.

So—and I want to close by saying one further thing, which is a marvelous example. Savannah in the 50's and 60's made this tremendous burst of effort that Ms. Churchill talked about to restore buildings, and it has been—1,800 buildings have been restored, and it is has poured millions of dollars worth of restoration downtown has paid off.

But the best thing that has happened in the last ten years is the College of Art and Design. And these people are private. They have come in and taken institutional buildings and used them for classrooms like this, and it has been a boom to this city. It has been at least—the effect of it has been $50-100 million pouring into the city because 2,000 students are now downtown and living downtown. And, I am a student there, and I can tell you that the students are not only first-class people serious in the different disciplines that are here and I hope they are going to move into the performing arts—but they brought a faculty that is as good as any in the country. And who would have thought 40 years ago that this would have happened, except for the determination, ecstatic drive of people who really cared about the city.

And Stephanie is right. This is for us. We are delighted you are here and that the tourists come. But it is really for us and for this country and the for the people living here and want to live here. Thank you for letting me come. I appreciate your remarks, Wyche.

Senator CONRAD. Thank you very much. If I might beg the indulgence of the last two members of this panel, I just noticed that the Congressman has arrived, and I am wondering if it would be all right with the two members who we have yet to hear from if we could interrupt and have a chance to hear from the Congressman, if that would be all right with the two of you?

Ms. CATRON. Yes.

Senator CONRAD. All right. Welcome, Congressman. [Applause.]

Senator FOWLER. I want to tell you, Mr. Chairman, that my good friend and colleague, Congressman Lindsay Thomas, we are delighted to have you. I knew that when you started bragging about how I got that bridge, that would get him over here. I want to publicly acknowledge on the record here that I fully give Congressman Thomas 50 percent of the credit. It took took Lindsay Thomas on the Appropriations Committee and his leadership in the House and, of course, a little modest help from me on the Senate side to deliver the goods that we are very proud of. He is an excellent Representative not only for coastal Georgia, but the entire state. I am always glad to be in your territory, Brother Lindsay. Thank you for coming.

STATEMENT OF HON. ROBERT LINDSAY THOMAS, U.S. REPRESENTATIVE FROM GEORGIA

Mr. THOMAS. Thank you very much, Senator Fowler and Senator Conrad. It is good to have you down here. I think is always great that we get our friends and colleagues from other parts of the country to come down here and to really hear the King's English in its best form.

But, I am delighted also to be here with a lot of good friends on the panel that have probably put many things I would like to say far more eloquently than I could. But, let me just make a few comments.

First, Senator Fowler, we are glad that you have been instrumental in bringing these hearings here. We appreciate your effort in the historic preservation area and, of course, your interest in the coast of Georgia. And Senator Conrad, all of the coast of Georgia is in my Congressional District. It is the southern boundary of this district. And, of course, here abounds much of our very important historical architecture and much of the physical characteristics of our area, the coastal marsh systems and the Barrier Islands and the beaches, that are extremely important to us. And so, I have appreciated Senator Fowler's commitment, and he now is a property owner in my district, and so, I am his Congressman truly. And I am glad to have him here this morning.

It is also good to be here in this building, and I listened to the comments of my good friend, Lee Adler, and it brought to mind, really, the heart of what I would like to say. That I think you have come to a great place to discuss the interests that you both have in this legislation and in helping in this effort. Because here truly is a modern cosmopolitan city with all of the endeavors of international trade and commerce. Major industries, their headquarters located here. And this great and rich mixture of people and cultures and backgrounds who live and abide in this community—people from all walks. At the same time, living in a community that is just absolutely incomparable in its historic significance.

I have watched it over the years I lived here in one of the old restored buildings in 1966 when Melinda and I first moved here straight out of the University of Georgia, and I walked the streets in the morning back and forth to work and watched this movement. I have family who are here today and former family members who were a part of the historic preservation movement in its earliest inception here in Savannah and did some of the homes in the downtown area themselves. And I take great pride in that.

But that is of great significance to us—this preservation movement, which is not only, as I see it, a responsibility of ours to preserve for future generations and for our young generations in particular, things of historic significance that give to them the opinions for the future that they move into. A sense of continuity and a sense of importance of things that have passed where their roots are bedded. And so, I think we carry on an important responsibility. But at the same time, I think we do something else, and we are sitting right here in the midst of it today.

Some people would think that historic preservation is an impediment or perhaps is a problem to economic growth and development. Not so. Here in this vibrant downtown community, we are seeing that that historic preservation has not only been the basis for a thriving tourist industry. But now, operations like Savannah of College of Arts and Design are coming here and utilizing buildings that would probably be a bit of problem to preserve for the usage by other industry. And so, what a great mixture we have in this downtown area. It is thriving. We are doing the right things.

But, we all look to you and your help and effort, and I certainly want to pledge mine to you to say that we cannot do it with just talk and words alone. We have to have help. And we have to have guidance and direction carried on by those who are active and by our federal help and assistance. And also, certain provisions, some in the tax code and elsewhere, that can help us carry on this important work.

So, it is important to me, and I think it is a very good thing that you are here in what I would consider one of the largest and certainly one of the most beautiful historic preservation districts in the country today. We thank you for coming, and I thank you and thank the members of the panel who have let me interrupt here briefly. I have two fish fries, a barbecue and another speech tonight that I must make. Things are busy in my district, but I thank you for coming. I pledge my support to you, and thank you for giving me a few moments.

Senator CONRAD. Thank you very much, Congressman. I just like to listen to you people talk. I really do. I mean, you people——

Senator FOWLER. But, can you understand? [Laughter.]

Senator **Conrad**. Well, I did bring an interpreter with me. You know, you talk about the King's English, and it is. It is a little different version that you have down here than we have in my part of the country. But, it is delightful to come down and listen to you people talk about something that is obviously very important to the community. And I just want to tell you on this bridge question that I would divvy it up a little differently than Senator Fowler did. I would give you 100 percent of the credit for what happened in the House, and I would give him 100 percent credit for what happened in the Senate.

Mr. **Thomas**. That sounds good to me, Senator. Thank you.

Senator **Conrad**. It was good to have you here.

Mr. **Thomas**. Thank you, sir.

Senator **Fowler**. Thank you, Lindsay.

Senator **Conrad**. Next, we will resume with our second panel, Helen Catron of Minority Preservation. Welcome.

STATEMENT OF HELEN J. CATRON, MEMBER, GEORGIA NATIONAL REGISTER REVIEW BOARD, DEPARTMENT OF NATURAL RESOURCES, PARK AND HISTORIC SITES DIVISION, HISTORIC PRESERVATION SECTION AND CHAIRMAN, MINORITY HISTORIC PRESERVATION COMMITTEE, GEORGIA'S HISTORIC PRESERVATION SECTION

Ms. **Catron**. Thank you. I am very pleased to have the opportunity provided by the Subcommittee on Public Lands, National Parks and Forests to offer comments on the Historical Preservation Bill on behalf of the State Minority Historical Preservation Committee of this region and Georgia's Historical Preservation Program of the Georgia Department of Natural Resources, Parks and Historic Site Division.

We appreciate the efforts of our Georgia Senator, the Honorable Wyche Fowler to strengthen and improve the nation's historic preservation program. We are pleased to add our support to that of the national organizations which represent state programs and National Conference of the State Historical Preservation Officers (NCSHPO) for their efforts.

I would like to say at this time how much we appreciate Doctor Lyons, Chief of the Historical Preservation for the state of Georgia, and her great interest in minority historical preservation.

The national law and framework provided by the federal government has enhanced the state's effort to preserve their heritage. However, very little effort in the past has been taken to address minority work and involvement with preservation and has not known for most national levels organization for historical preservation.

This is not to say that the National Park Services and some SHPO's around the country have not recognized the value and relationship of certain important minority contributions in documenting landmarks and historical sites as Doctor Martin Luther King. The National Conference of SHPO's held in Washington in 1989 recognized the critical need for State Historical Preservation Officers to address the minority group issues and participation in the field of historical preservation.

Extraordinary effort will be needed to bring together organizations and groups that either have traditionally worked through other avenues and programs or have been aware of the State Historical Preservation programs that can assist minority communities in revitalization efforts.

The Minority Preservation Committee for the state of Georgia Historical Preservation Section has set forth some goals which I am not going to elaborate on, but I would like to address maybe two of those goals.

Foster participation of minority groups and individuals in the statewide historical preservation movement and to encourage interaction with the statewide preservation organization as the Georgia Trust, Georgians for Preservation Action, Georgia Alliance of Preservation Commission and the Society for Georgia Archaeology. And increase the interaction at the local level.

I would like to really state that the Minority Preservation Committee, which is composed of 12 persons representing the regions for the state of Georgia, has recognized the special needs to help black children become aware of where they came from and to understand the contributions of their families and ancestors to the history and culture of the state is very well needed.

The Historical Preservation Administration Act and the National Preservation Policy Act both strengthen the program and allow for greater responsibility and the development of minority projects and technical and planning assistance. A historical preservation agency would have more flexibility and would be able to provide the necessary mechanisms specifically needed to assist and support these newly formed minority councils, committees and task forces to bring them into the confines of federal, state, local and private preservation organizations.

The story of blacks in the United States is a combination of the tragic and the heroic, of denial and affirmation. But most of all, it is the record of a tidal force in American life. Those who seek any insight into human relations must inquire into the total dimension of a historical perspective. Thank you.

[The prepared statement of Ms. Catron follows:]

TESTIMONY

5.1578 and 5.1579: National Historic Preservation Policy Acts
Subcommittee on Public Land, Natural Parks & Forests
May 19, 1990

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The national law and framework provided by the federal government has enhanced the state's efforts to preserve their heritage; however, very little efforts in the past has been taken to address minority work and involvement in preservation and has not been known to most National level organization for historic preservation.

This is not to say that the National Park Services and some SHPO's around the country have not recognized the value and relationship of certain important minority contributions in documenting Landmark and historic sites. The National Conference of SHPO's held in Washington in 1989 recognized the critical need for state Historic Preservation Officers to address the minority group issues and participation in the field of historic preservation.

Extraordinary efforts will be needed to bring together organizations and groups that either have traditionally worked through other avenues and programs or have been aware of the State Historic Preservation program that can assist minority community in revitalization efforts.

The minority preservation committee for the state of Georgia historic preservation section has set forth the following goals of the work of supporting the preservation of properties associated with Georgia's black heritage.

1. Foster participation of minority groups and individuals in the statewide historic preservation movement.

2. Increase public awareness of Georgia's black history, both statewide and in local communities, and promote the preservation of properties associated with the history.

3. Increase interaction at the local level between organizations, institutions, and individuals interested in working with minority preservation, local preservation organizations, and local government.

4. To encourage interaction with the statewide preservation organization as the Georgia Trust, Georgians for Preservation Action, Georgia Alliance of Preservation Commission and the society for Georgia Archaeology.

The minority preservation committee of the state of Georgia recognized the special need to help black children become aware of "Where they came from" and to understand the contribution of their families and ancestors to the history and culture of the state. The Historic Preservation Administration Act (5.1578) and the National Preservation Policy Act (5.1579) will strengthen the program and allow for greater responsibilities in the development of minority projects and technical and planning assistance. A historic preservation agency would have more flexibily and would be able to provide the special mechanism specifically needed to assist and support these newly formed minority councils, committees and task forces to bring them into the confines of Federal, State, local, and private preservation organizations.

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Helen J. Catron
Helen J. Catron
Member of Georgia National Register Review Board of the Department of ~~Human~~ Natural Resources, Park and Historic Sites Division, Historic Preservation Section,
Chairman of the Minority Historic Preservation Committee of the Georgia's Historic Preservation Section

Senator Conrad. Thank you. That really was excellent testimony. Next, we will hear from Maryel Battin of the Macon Heritage Foundation.

STATEMENT OF MARYEL BATTIN, EXECUTIVE DIRECTOR, MACON HERITAGE FOUNDATION

Ms. Battin. Thank you for this opportunity to address you today. I would just like to give you a little background. I come from Scotland, which is a country that saves money, saves its heritage and it saves its buildings. And I think you—most of you know the tourism that is being created through that very ethic. And I am very glad to see what is happening in Georgia and I think over the country as far as preservation. It will work and it is an economic impact that it will have.

I would like to give you a little overview of the successes and give you some suggestions for assisting our efforts and explain why the need the historic preservation agencies that you are suggesting. In Macon, we have been able to use the preservation programs as outlined very effectively. I think we are second only to Savannah in showing the economic impact of historic preservation.

Through the State Historic Preservation Office, we have been able to get a little funding for survey grants. We now have more than six historic districts in Macon, and most of those grants have gone towards surveying neighborhoods that are over 90 percent minority. This, we feel, is very important because then it allows the investors in this area with substandard housing to begin to try and redevelop some of our inner city low-income historic housing. And I am going to talk a little bit more about that later.

The certified rehabilitation program, I think, is working well. We have used it for more than 100 residences and about the same number of commercial rehabilitations. I think they are easy to follow. It is real rehabilitation. It is not cosmetic. And I think it has created a real awareness in the smaller cities especially of the value of historic resources. What we see is what we are. And the first impact that you have with education is visual. And I think we have to have that visual impact before we can educate.

Tourism in Macon was almost a non-existent industry before we had historic rehab. Now, we have millions of dollars coming in, and our entire tourism program is based on our historic resources. There is no other tourism program in Macon. We use our archaeological resources, as in the Ocmulgee National Monument, as well as our Landmark and Historic Districts.

We also have assisted the State Historic Preservation Office in 106 reviews. And I would like to mention the possible use of local 501C3 non-profits to assist and really to benefit the state and the federal programs. Through the cooperation of the Advisory Council on Historic Preservation, the State's Historic Preservation Office in the city of Macon, our non-profit can now review all 106 clearances for residential rehabilitation. That has reduced the turnaround time on review from 30 days to approximately five days. And I think we can react much better on a very local level to what the needs are. And it is a good use of local resources to help the state and the federal programs.

So, in summary, all of these programs, I think, are working well. They are simple to follow, and simplification is absolutely the most important thing we can do in this program. The programs, I think, are well thought out and they are accepted by the public and they are effective. They have worked.

There is one area where we really need your help, and that is in affordable historical housing. Macon heritage has worked over the last year and a half to put together 25—and that is a very small number—but, 25 low-income historic housing units in our minority historic neighborhood. We have to have private—this has to be a private/public partnership. I want to list for you the number of agencies that we have to pull together to make this work. No, the average investor would not and will not do it.

First, we go to Georgia Residential Finance Authority. We have to adhere to their specifications for a low-income housing credit. We then have to have our plan for rehab reviewed by the State Historic Preservation Office and the National Park Service. To get financing, which the bank—local bank—will not give us. The risk is too high. We have to go to HUD for 203K financing. One arm of HUD has to review the rehab. We then have to go to HUD for review of the rent. We have to go to another section of HUD for review of the rehab standards, and if the customer is using project-based assistance, they have to review those rents also. We have to adhere to the local code of inspection and fees. We have to adhere to what Macon Housing Authority wants because the Section 8 certification is involved. We have to adhere to what community development wants because it is community development block grant money. We went to the bank to try and get financing. It was impossible. That is why we had to go to HUD for the 203K. And finally, we have got to sell this to the investor who wants some rewards for the risks that are involved.

Now, the only way to pull all of that together as a private investor is to pay for a lot of high-priced legal help. And there is not enough money in this to do that. We have got to give a greater caret in order to attract the private investor to help us with low-income housing. I do not believe there is enough tax money in this country to make low-income housing, to rehabilitate it, and to get some decent housing for low-income people. It is a partnership with the private investor and with some public leadership on this point.

Some of the suggestions I have are to remove the passive income lost restraints. And I think the agency that you suggest could have this as one of their priorities. We have got to do something. Some of our low income people would be better off homeless, to be honest with you. The conditions in which they live are absolutely appalling, and our city has more than 25 percent substandard housing, most of it in our historic district.

So, what we need from your agency that you propose, I believe, is some more brick and mortar funding, some real leadership in this affordable housing, simplification of the tax laws as it relates to historic preservation and especially to historic rehabilitation in the low-income areas, and really, protection of all of our natural and historic resources.

We have seen what happens when you do urban renewal. It does not work. If we are going to protect our historic neighborhoods, we have got to have some more leadership. And I think it is working better now with education and with momentum for the middle and higher income people in the historic district. But, for a lot of the inner city low-income neighborhoods, it is very difficult.

And, if we can get some leadership on that, I think that it will really benefit and it will stir the economic impact that it can have, not only on historic preservation, but inner city historic housing. Thank you.

[The prepared statement of Ms. Battin follows:]

TESTIMONY BEFORE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
SAVANNAH, GEORGIA, SATURDAY MAY 19, 1990 CHAIRED BY SEN. CONRAD
OF NORTH DAKOTA.

I certainly appreciate the opportunity to testify before your committee on Senate Bills 1578 and 1579. Historic Preservation has had a major impact on the economy of Georgia both through its emphasis on the reuse of our historic buildings and the infrastructure associated with them, and through heritage tourism which has become a major source of revenue for the State of Georgia. As Executive Director of Macon Heritage Foundation I have had the privilege of working with all segments of the community in Macon, Georgia and I would like to give you an overview of how historic preservation has impacted our community and what the present system has achieved. I will then make some suggestions for what might be done to assist our efforts.

1. Survey grants. Through the State Historic Preservation Office we have been successful in receiving grants for surveying historic neighborhoods. 90% of our grants have gone towards listing low income minority neighborhoods on the National Register so that investors can take advantage of the historic rehabilitation tax credit to assist with renovation.

2. Certified Rehabilitation More than 100 residences and about the same number of commercial rehabilitations have taken place through the assistance of tax credits for certified rehabilitation. The Standards are working well, and are easy to follow. They create major rehabilitation, not just cosmetic repair,and place our historic buildings back in service for many years to come. In addition, rehabilitated buildings in our historic districts creates an awareness of our cities. We are what we see.

3. Tourism The basis of our entire tourism program in Macon is our historic resources. Today that program has an $180,000,000 impact in our community. This has occurred since the preservation program was accepted in our community and now has the support of our Chamber, City and County governments.

4. Local Assistance Through the cooperation of the Advisory Council on Historic Preservation, the State Historic Preservation Office and the City of Macon, Macon Heritage can now review 106 clearances for residential rehab in Macon. The review time, as a result, has been cut from 30 to five days. This is a good use of local resources to help implement a program and to cut down on state and Federal programs where local assistance is available.

Summary The above programs are our successes and are a direct result of Federal programs that have worked well in our community. The rules are simple and easy to follow; they are well thought out, effective and accepted by the public.

Let me now address some areas that need fine tuning:

1. Affordable Historic Housing Our organization has tried for the last year to put together a public-private partnership to rehabilitation low income historic housing. It is our premise that the Government alone cannot address all the problems of substandard housing in our inner cities. It needs and should involve the private investor. However, the present system is so complicated and the rewards for involvement so limited, that the private investor will not be involved until the program is changed. To illustrate, Macon Heritage has purchased 25 substandard dwellings in a minority historic neighborhood where more than 60% of the houses are below code. It is our intention to work with private investors to completely rehabilitate these structures; no tenants will be displaced and all houses will remain available for low income residents for the next fifteen years. Following is a list of the agencies that must agree on all phases of the progrm:

Ga. Residential Finance Authority:	approval of plans and proforma for Low Income Housing Credits
State Historic Preservation Office:	approval of plans for Historic Rehab Tax Credits
National Park Service:	approval of plans for Hisotir Rehab Tax Credits (exact duplication of SHPO)
HUD:	approval of plans for 203K financing
HUD:	approval of rent structure
HUD:	approval of plans for Section 8 assistance
City of Macon Inspection and Fees:	approval of plans for local code requirements
Macon Housing Authority:	approval of rehab for Section 8 requirements
Community Development Dept.	approvals for CDBG funding
Investors:	agreement to accept risks associated with program and invest in same

WE have been fortunate to receive much high-priced legal help pro bono to assist us through this maze of bureaucracy. However, the average investor would not be so fortunate. In addition, it has taken us eighteen months to arrive at the point where we can go out and present the investment opportunity to private individuals. A for-profit developer does not have the luxury of that amount of time to develop a project and would have long-since abandoned any thought of redeveloping low-income housing.

RECOMMENDATIONS:

1. Simplify the procedure so that these important projects will be done through public-private partnerships. The suggestion for a new Historic Preservation Agency where preservation is the only priority would go far to assist in this regard.
2. Remove the passive income/loss restraints for low income housing. At present the risks are too great for the average investor to help the Government, and the Government needs the help of the private sector to alleviate one of our country's greatest problems - decent housing for everyone.
3. Provide"bricks and mortar" funds for low income housing to attract and leverage private investment.
4. Focus on the revitalization of low income neighborhoods in the older sections of our cities where most dwellings are historic (at least 50 years old). Remember what Urban Renewal created and realize that redevelopment of existing housing is the only alternative.
5. Provide incentives for homeowners of historic properties. At present the tax incentives are available only to income-producing properties. Redevelopment of historic inner-city neighborhoods through affordable home-ownership will go far to develop the local tax base in our communities, reduce crime and revitalize the community. Many historic residential buildings can now be saved only through conversion to commercial uses. This runs contrary to the development of inner city neighborhoods.
6. Private non-profit organizations who have the support of their local communities can be a useful tool to assist the Government in developing creative and innovative programs. Use their talents to reduce costs and assist in developing new ideas.

I hope that these suggestions and recommendations will be of assistance. We certainly appreciate your interest and responsiveness to these important issues and we look forward to assisting you in any way you see fit.

Maryel Battin, Executive Director
Macon Heritage Foundation, Macon, Georg

Date: May 14, 1990

Senator **Conrad**. Thank you very much. I listened to your testimony and to your introduction, equating being Scotch, I was raised by my grandparents. My grandmother was Scotch, and you made reference to being close with the dollar. I can testify to that.

Ms. **Battin**. Right.

Senator **Conrad**. I found the testimony of this panel very interesting and exceptionally good. Last night, I had dinner with a local couple, and they took me on a tour of town afterwards, and we went through an area that is being redeveloped here. And I wanted to first ask Mr. Adler, you were making reference to this effort that is underway. How many units are in this project?

Mr. **Adler**. One hundred.

Senator **Conrad**. One hundred units.

Mr. **Adler**. Yes. We have done, since we started in 1974, 530 units of about, take the two areas—there are about 1,400. Mostly controlled by slum lords, producing very little tax money.

Senator **Conrad**. What is the need in this city alone? How many units——

Mr. **Adler**. Stephanie Churchill said it was 4,000.

Senator **Conrad**. Four thousand.

Mr. **Adler**. We only assessed the Victoria district. I know that there are 2,700 housing units of the Public Housing Authority and ten projects. But, I do not know what happens to housing authorities in this country because although we have a good director—and a nice man, a young, aggressive fellow—you ride through them today, and most of them—a lot of them are boarded up. And there is a great cry to privatize them, whatever that means.

I think that this marriage that HUD had with the private nonprofit worked well because the developer was brought in and he had to manage the project very well. He had to screen to get the responsible poor—good word, good phrase. People who do not want to live next door to crime any more than anyone else. Responsible people who may be domestics. They may be retirement people. But, who want to live in a town near downtown to use the facilities of the downtown and deserve a decent place to live. So, what we were trying to provide and what you saw last night was safe, sanitary housing in that historic area.

Senator **Conrad**. And how long will this project take to complete?

Mr. **Adler**. It will be wrapped up about—I would say about September.

Senator **Conrad**. One of the things that struck me last night—what happens to the people who were there? Do they get first call on——

Mr. **Adler**. This was all abandoned.

Senator **Conrad**. It was all abandoned. I see.

Mr. **Adler**. We did not touch any homeowners. We worked around them and with them. So, what it is going to do is provide decent housing for people, which is exactly what we did in the Victorian district. We tried to stop the displacement. I think there must be also a very strong thrust to underwrite properties to get upper and moderate income people interested in moving into what is considered "the slum."

Of course, there is one other thing, Senators, that really disturbs me, and that is this drug problem. I mean that, even in those areas, are prevalent and they are decent people not knowing what to do about it. And this is a city that is a port city. It knows it has a drug problem and tries to address it. And yet, what are we doing with it? And I think your bill, Senator Fowler, should recognize that Mr. Bennett should have—I mean, some department must be working with the housing people.

We in Savannah Landmark have addressed this housing program. When we started in 1974, there were many people of the Board—this was a 26-member broad cross- section Board—talked about the various services that people need in the area. But, we had to put our eye on one sparrow, and that was housing, in order to get it done. If we diverted to other problems, such as drugs, crime and so forth—Yet, when the neighborhood got together and realized things were being done, there was a tenant council formed. There were 500 members of it. It religiously met. It formed a neighborhood watch program. And things began to come together where people helped each other and paid attention to a revived area.

I think you will find that this area, particularly with the marvelous King Thistle Museum that both historic Savannah and others have supported and many private people, will be one of the fine areas of Savannah. And from that wonderful cottage departs a Negro Heritage Trail tour of this city, which is amazing because we are sitting right near the First African Baptist Church, which houses the oldest black Baptist congregation in the country.

Senator **Conrad**. I went by it last night.

Mr. **Adler**. A marvelous church community, but the people, the congregation, is very aware of its heritage and its history and its building.

Senator **Conrad**. I was wondering if Brother Fowler had ever preached there.

Mr. **Adler**. Well, I will tell you all, we had this 1977 Congress conference on low income housing and again in 1982 and we held it there and it was marvelous.

Senator **Conrad**. You know about Brother Fowler, that he really is a frustrated minister.

Mr. **Adler**. I know it. He says "Wyche" like in church, right?

Senator **Conrad**. "Ch" as in church.

Senator **Fowler**. I seek and need the Lord's protection at every opportunity.

Senator **Conrad**. Any questions that you have?

Senator **Fowler**. Ms.—is it Catron?

Ms. **Catron**. Catron.

Senator **Fowler**. That is what I thought. Thank you. With a name like Wyche, you can always ask that. Ms. Catron, there is no question that Black Americans have been under represented in the historic preservation movement. One of the things that I put in my bill was to try to create some historic preservation degree programs at the historic black colleges and universities throughout the country. That will help, will it not?

Ms. **Catron**. Yes, because basically, education is a very important factor. Educating the black people because as it is now, some of them are very ignorant of their heritage, does not want to recognize their heritage because of the Civil War and slavery. But, it is still history and we have to make them aware of that, especially our children.

Senator FOWLER. Well, you know I agree with you. I think as Ms. Battin said so eloquently—I wrote it down. What we see is what we are. And if we also forget our history, then we are doomed as people. We must make future decisions that will protect, and then enhance that.

Ms. CATRON. I would like to mention that I did forget Doctor Roberts is here of the Tisdale organization. She is sitting in the audience, and she is a member of the minority committee.

Senator FOWLER. Wonderful. Glad to see you, Doctor.

Dr. ROBERTS. Thank you, Mr. Fowler. I was very pleased to be asked to serve on this committee and I do think there is a very great deal of help coming from this committee to help educate our children and our adults concerning the importance of historical preservation.

And I think you deserve a gold star in Savannah, Mr. Adler, himself, and we appreciate his support. Mr. Field could not be here today as his group is taking a trip visiting Augusta and Mr. Hilderbrand also serves on the Board and the Beach Institute area that Mr. Adler mentioned. They are trying to do some of that restoration there.

Senator FOWLER. Thank you very much for your attendance and your representation.

Ms. Battin, I want to thank you for the work that—fine work that you are doing in Macon that you described. Augusta also has a significant program underway. And I guess more than anything else, the need that I think you outlined when you cataloged all those agencies and cross references and backtracking at all three levels of government to get just a single apartment—25 units, I think you said—is the real impetus behind the administrative act that I have introduced.

Your suggestions on that, of course, were very good also. We all recognize that. But, we do have a lot of people who just literally throw up their hands and say, "It cannot be done." I am not going to hire a lawyer, fill out all the papers and go to eleven different agencies. It is not worth the effort. You are so far in the hole, you never get results.

So, I am very pleased with all of the suggestions that I have had to help both by state officials and national officials. We have got more unanimity on the streamlining process and centralization of the one system that is easily assertable. The fact that we can figure out how to do it in the historic preservation, and then we can figure out how to do it in the tax code. We would really make a contribution to the public.

Ms. BATTIN. I think one of the things that we really must understand is the end user. You know, if we are going to do low-income housing, the Government has got to have private help in order to do it.

Senator FOWLER. Absolutely.

Ms. BATTIN. And time is money. And if the private investor can get 10 percent or whatever in CD's or in money market or in the stock market, why should he take the risk of helping the Government do low-income housing?

Senator **Fowler**. Absolutely.

Ms. **Battin**. And you need that—you need his business.

Senator **Fowler**. We fought it, some of us. I was on the Tax Committee in the House before I came to the Senate. We warned, with Mr. Adler's help, that a repeal of those sections, what it would do. Not only did the housing stop, generally, but specifically, the low income housing efforts. And of course, now we see that unfortunately, we were absolutely right. That is the wrong public policy.

Ms. **Battin**. We have worked a year and a half, and I have a file eight inches thick. And we have not turned the first shovel of dirt yet. And yet, before the change in the tax law, we were doing it with all these different agencies and everything worked together. And we have got some people in good rehabilitated low-income housing in their neighborhoods. And it will be low-income housing for 15 years. But, the incentives we had before are not in place now. And that is what we need, is more incentives for the private/public partnership to work together to get some decent housing.

Mr. **Adler**. It took us eight years to do the project you saw. And before that—that was 100 units—before that, it took us five years to do the rest of it.

Senator **Conrad**. Eight years?

Mr. **Adler**. Eight years.

Senator **Conrad**. You know, I wrote down, Maryel, if I might use your common name, the passive lost restraints as well that are in the current law because I, too—think the 1986 Act went too far. And that it is having a very dramatic effect around the country.

One other question that I wanted to ask of Stephanie Churchill was about the Harry S Truman Parkway. I was interested in your comment that it could split the historic district here. As I understand it, it is going to terminate at the edge of the historic district, is that what is going to happen?

Ms. **Churchill**. There are two proposals that are being considered right now. One that is favored by the state at this moment would end at the southeast corner of the historic district where it would just dump all of this traffic right into the district. The problem is on the other side of the district—the new bridge—thank you very much. But, it—you know, it will just cause traffic to go right through like that.

The ending that we would like to see, which is the one that most of us locally, city and county residents, all agree upon would take the traffic clear to the north end of the district where it would be—it would tie into another thruway which would allow the heavy truck traffic to be diverted around the district, rather than having all of this just land right in the middle of a residential area and a very fragile historic environment.

Senator **Conrad**. How do you see this legislation as helping in a situation like that one?

Ms. **Churchill**. Well, because as we have explained, the current process for the Section 106 review pretty much assures the review will take place, but once the review is done, the federal agency—in this case, the Highway Department—can just say, "Well, thank you very much for your comments," and go ahead and do whatever they want. And under the provisions that Senator Fowler has drawn up, it sets higher standards for the federal agencies than they have to meet.

Senator **Conrad**. Do you have any other questions?

Mr. **Adler**. Yeah. How can we help?

Senator **Conrad**. Well, I think we have gotten a number of comments here from people about educating people. And frankly, that is what this hearing is all about. It is educating the Committee and hopefully, through the media, helping to educate others about the importance of all of this.

But that, to me, is the critical component. I mean, the way we bring people along is to help them understand the positive results which follow from this kind of program. And very frankly, there is lots of resistance, as you know. A lot of resistance from people who think this is anti-development. I think we have heard here today, it is precisely the opposite when managed correctly. When managed correctly, it contributes to development.

Mr. **Adler**. As you know, there are two—the preservation movement is not split, as many of the environmental movements are—I mean, not split—I mean, they are not divided into a lot of different organizations. The National Trust Historic Preservation is the main spokesman for the preservation community, and I do not need to talk about that. Then, there is this marvelous group called Preservation Action, headed by a brilliant woman, Nellie Longsworth, who has its feelers and members all over the country, and they are a very active group now.

When is the time, Senators, for us to get to work on these organizations and when will they have an opportunity to ask you what help you need to get this done?

Senator **Fowler**. Well, I can be even a little more specific than Senator Conrad. As Mr. Paxton testified, we are very hopeful that we will have a consensus approach with the enthusiastic endorsement of the whole national preservation community. Almost all of the people at this table, we have worked together hand-in-glove over a 3-year period to develop these recommendations. Lord knows, he threw light on my infertile mind. And we have been very pleased with the extraordinary cooperation. We have just about put these two bills together. I will reintroduce them through the normal process with everybody involved. And then, what we need from the community is to concentrate first on the two committees in activating their state and local people to go see all of these members. Tell them how much work has gone into it and what kind of support and how important it is. And that personal contact of getting—how many members are there? Nineteen members in the Senate and probably 27 in the Committee of Jurisdiction in the House, if we can get them past the committees. I am hoping we can pass this this year or certainly early next, but I am shooting for this year. But we have done about all of the work we can do now. We do actively need local and state efforts in the individual states to get the job done. We will certainly provide you with that information as to who they are.

Well, Mr. Chairman, I will let you have the last word. I want to thank you again on behalf of all these Georgians. For you to be here takes at least two days out of your schedule. North Dakota is a long way away. It has got some serious draught problems, agriculture problems. Senator Conrad is spending an awful lot of time at home trying to help people who do not have quite the good economy right now that we have in our state.

So, I am personally thankful, Kent, for your being here. And, I guess you have heard, we have got a lot of good work going here that we will translate into national policy because we think it will benefit the citizens of North Dakota and California and New York and come up with a stronger effort for the preservation of our country. So that Americans will finally know what being an American really means.

Senator **CONRAD**. Well, I just want to thank you, Wyche, for inviting me. It has been a very pleasant trip for me. I have learned a lot. And I think the witnesses that we have had here today have been exceptional, without exception. This has been really excellent testimony that we have received here today, and I think this will inform the actions of the Committee and do a great deal to provide momentum to this legislation that Senator Fowler has taken a leadership to introduce.

And I want to thank all of those who have testified, all of those who have participated in preparing that testimony and all of you who have been in attendance here today as well. And again, I want to say what is true. And what is true is that Senator Fowler has been the leading voice in the United States Senate on this question, and it is because of his leadership that we are as far along as we are.

And with that, again, I want to say thank you to the community for providing such a warm reception. Thank you very much.

Senator **FOWLER**. Thank you, everybody. This is Beth Norcross, Professional Staff Member of the Energy Committee who was extremely helpful to me when I served on the Committee and I wanted to introduce her not only out of courtesy and out of respect for her professional competence, but also to give all of you a name of a leading staff member on the Energy Committee who will ultimately make this decision. [Laughter.]

So, if you need any extra material or something, I am sure Ms. Norcross will be delighted to provide you with any.

Ms. **NORCROSS**. Definitely. Thank you.

Senator **FOWLER**. Thank you very much.

Senator **CONRAD**. Thank you.

[Whereupon, at 11:45 a.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

NCSHPO
National Conference of State Historic Preservation Officers

SUITE 332 HALL OF THE STATES
444 NORTH CAPITOL STREET, N.W. WASHINGTON, DC 20001-1512

202/624-5465

May 30, 1990

The Honorable Dale Bumpers
Chairman
Subcommittee on Public Lands, National Parks and Forests
308 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Bumpers:

Please find enclosed the responses of the National Conference of State Historic Preservation Officers to the questions of Senator Malcolm Wallop on the National Conference testimony on S. 1578 and S. 1579.

The National Conference appreciates your interest in and support of historic preservation. The work of the Subcommittee on Public Lands, National Parks and Forests is essential to the maintenance and improvement of the nation's system for historic preservation.

Please let us know if we can provide any additional information.

Sincerely,

Eric Hertfelder
Executive Director

Responses of the
National Conference of State Historic Preservation Officers
to Senator Malcolm Wallop
on S. 1578

1. Preservation Agency and land ownership

The intent of the language in Section 5(c), as the NCSHPO understands it, is to ensure that the Preservation Agency does not become a land managing agency. The NCSHPO believes that the needs of land management drain the resources and attention of land managing agencies so that other responsibilities become secondary. In order to have a preservation agency at the federal level whose mission is the preservation of all of the nation's resources, it is essential that the agency's mission be focused fully on preservation.

We believe that the language in Section 5(c) regarding transfer of real property is designed to address the possibility that in the course of its work the Preservation Agency might temporarily acquire such property through donation, or perhaps as an expedient way to alleviate a threat to a property. While this is not likely to happen often, if ever, Section 5(c) allows for the possibility that it will occur and instructs the Agency to transfer the property to others with appropriate property management responsibilities.

Given this intent, it is expected that the price the Agency got for a particular piece of real property would vary depending on circumstances. If a piece of property were donated to the Preservation Agency, for example, the Agency might well transfer the real property with a restrictive preservation covenant or easement to an appropriate owner at less than fair market value which would ensure its preservation at no cost to the federal government.

2. Center for Preservation Technology administration

The establishment of the National Center for Preservation Technology grew out of a report of the Office of Technology Assessment, Technologies for Prehistoric and Historic Preservation, 1986, which recommended the creation of a technology center. It is our understanding that the staff of the Center would be federal, civil service employees.

The purpose of the Center is to create a central coordinating mechanism to bring coherence to the current, fragmented research community to maximize the technology transfer within limited resources.

Individuals involved in thinking about the Center envision a budget of $500,000 initially to $5 million annually. It would have a small core staff of from four to five professionals and commensurate clerical support. The budget would cover the essential administrative costs, travel and conferences necessary to coordinate technology transfer nationally, and the core expenses for the regional centers. It is likely that the federal dollars would make up the base program budget. Additional funding would come from other participants in the Center: universities, States, corporations, foundations, etc.

3. Regional preservation centers

The regional centers referred to in Section 8(h) would be the places where the research supporting the purposes of the Center would be conducted. These are expected to be existing facilities at universities, federal laboratories, State agencies, or other qualified organizations and institutions. The bulk of the activities would be funded through project specific grants. Some funding would be required for administrative time and travel to coordinate programs. These "core" expenses for from six to ten regional centers should be about than $50,000 annually. Technical laboratories may also be designated to perform specific tasks on a project specific basis. Funding for these would come from specific project grants.

4. Transfer of Cultural Advisory Committee

The effectiveness of the Cultural Property Advisory Committee is presently quite limited, in part because its work is not coordinated with other aspects of the nation's historic preservation program. By vesting its functions in the Preservation Agency, S. 1578 would make it possible to integrate these functions into other functions of the Agency, drawing on the resources of the Agency and ensuring consistent approaches to the problem of artifact trafficking.

The Advisory Council and the Department of the Interior have, over the years, regularly provided advice to USIA on historic preservation matters. Arguably, in fact, the existence of the Committee within USIA encourages USIA to turn to it rather than the Advisory Council and

Interior for preservation advice, thus cutting USIA off from the broader preservation expertise represented within those agencies.

Responses of the
National Conference of State Historic Preservation Officers
to Senator Malcolm Wallop
on S. 1579

1. Compensation and partnership

We do not believe that Section 2 implies that historic preservation is primarily a federal responsibility, but that the federal government should pay its fair share of the costs of preservation. S. 1579 permits Interior and the Advisory Council to delegate to the States and others many functions that they now perform (e. g., Section 106 review, maintenance of the National Register, rehab tax credit certification). We believe that this is desirable and that it will enhance the effectiveness of the national program but such delegations should not occur without appropriate compensation.

Section 2 uses the word "compensation" in discussing the role of States, local governments and Indian tribes in carrying out the federal preservation laws. The purpose of that language, as we understand it, is to make it clear that the National Historic Preservation Act sets forth the national preservation program and that the activities that States, local governments and Indian tribes carry out under federal statute are federal activities for the accomplishment of which States, local governments and Indian tribes should be reimbursed.

The National Conference supports strongly the existing preservation partnership between the federal government (Secretary of the Interior and the Advisory Council) and the States and localities. The National Conference believes that the decision of the Secretary of the Interior in the late 1960's to carry out the preservation program through a partnership with the States, rather than relying solely on a federal preservation staff, was sound. States and local governments have, since the beginning of the national preservation program, accepted the responsibility for carrying out the federal preservation mandates and have contributed at least 50% of the cost. States do not believe they should be responsible for 100% of the cost of the federal government's preservation program.

2. Section 101 and federal agency responsibilities

The procedures set forth in Section 101 do not actually appear in current regulations, except to the extent that they are reflected in the regulations of some more sophisticated federal agencies, e. g., Army Regulation 420-40.

Section 101 does reflect the recommendations of the Secretary of the Interior and the Advisory Council for agency programs that appear in the 1988 Section 110 Guidelines. Agencies are not required to follow these guidelines, however, and few pay much attention to them, or to the existing requirements in Section 110 of the National Historic Preservation Act.

We believe that Section 101 of S. 1579 is designed to ensure that all federal agencies establish effective procedures for fulfilling the purposes of the National Historic Preservation Act.

As Senator Wallop will recall, between 1981 and 1986 a concerted effort was made by a number of agencies to prevail upon the Advisory Council to change, and we believe to weaken, its regulations governing the implementation of Section 106 of the National Historic Preservation Act: to eliminate the provisions for consultation, to eliminate provisions for binding agreements, and to dilute the provision for participation by SHPOs, other interested parties and the public. The Committee on Energy and Natural Resources, under the leadership of Senator Wallop, played an important park in turning back these assaults. A compromise was eventually reached that is reflected in the current Advisory Council regulations.

As long as the statute itself does not provide for these essential features of the regulations, however, the statutory basis for including them is open to question. In fact, the Justice Department, we understand, has never withdrawn its mid-1980's opinion arguing that the provisions are unsupported by law.

We do not believe that S. 1579 prescribes form, but we agree that it does outline a process for resolving conflicts between preservation and development. We believe that this is appropriate. The result of the process of considering federal project impact on historic properties will vary, as it does now, ranging from total preservation to total destruction of historic properties. We believe that it is appropriate and necessary to ensure through legislation, that an appropriate process is carried out in reaching such results including full provision for public participation, consultation, and the development of binding agreements.

3. Cost of federal agency preservation requirements

Section 101 of S. 1579 seeks to clarify existing agency responsibilities with respect to agency identification, evaluation, and preservation of properties under their jurisdiction or subject to effect, not to expand upon them. The current language of Section 110 of the National Historic Preservation Act is vague and is honored only in the breach by a number of agencies. Section 101 essentially outlines what the more sophisticated federal agencies do now to address their Section 110 responsibilities.

While some costs will undoubtedly be involved in carrying out Section 101's requirements, these are the same costs that would be involved in full agency compliance with the existing requirements of Section 110 of the National Historic Preservation Act. Such compliance often results in financial benefits to the federal government. In one recent case, for example, when an agency engaged in transfer of land under its jurisdiction found itself to have initiated a transfer with out carrying out its responsibilities under Sections 106 and 110 of the National Historic Preservation Act, and suspended its action until it completed those responsibilities, it received almost a million dollars more for the property when transferred than it would have received under the prior sale agreement. (Shelburne Glebe, Virginia)

4. Burden of proof in compliance

Section 102 introduces a new preservation protection provision that requires federal agencies to demonstrate that there is no feasible and prudent alternative to following comments of the Advisory Council, the last step of the preservation process.

The Advisory Council considers annually roughly 10 of the 100,000 federal undertakings for which consultation under Section 106 occurs. Those 10 cases, however, are the most difficult. The difficulty most often comes from a federal agency who refuses to recognize its responsibility under the National Historic Preservation Act to consider the effects of federal undertakings on historic properties. Such an agency will ask for Council comment and then ignore it. If federal agencies had to meet a feasible and prudent test for ignoring Council comments, such agencies would take the comments seriously.

The record of the Council (and the State Historic Preservation Offices which handle the bulk of the case load) over the past two decades clearly indicates a balancing of preservation with the needs of federal projects. Many National Register properties have been demolished or lost through this process. But, when it works, the intent of the law has been carried out: the consideration of historic properties as a part of the federal project process.

The amendment to Section 106 of the National Historic Preservation Act set forth in Section 102 of S. 1579 would place a burden of proof on federal agencies that choose not to follow Advisory Council comments. The burden involved being that of proving that there is no feasible and prudent way to follow Council comments.

We do not believe that this is an unreasonable burden for federal agencies to bear, particularly given the relative rarity of instances in which the Section 106 consultation process does not yield agreement and instead results in Council comment. In its recent report to the House Interior and Insular Affairs Committee on the effectiveness of Council regulations the Council noted that

> It also appears that [federal agency] decisions are made to ignore or truncate the requirements of Section 106 when an agency believes that discovery and protest or litigation by others is unlikely. Some agencies define "undertakings" and "historic properties" more narrowly that the Council's regulations require, so that those agencies' compliance is incomplete.[1]

In the final analysis, the fact that at present an agency can ignore the Council's comments, bearing no burden of proving even that it has considered them, undercuts the effectiveness of the whole Section 106 consultation process. The 1986 regulations made it easier for federal agencies to terminate consultation and request final Council comment, and although cases of termination are rare, it should be noted that the numbers have roughly tripled since 1986. SHPOs are very concerned that as more agencies come to understand the ease with which agencies can terminate consultation and then ignore the Council's comments, terminations will increase in number to the determent of the preservation of America's heritage.

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[1] Advisory Council on Historic Preservation, "Review of Regulations Implementing the National Historic Preservation Act Report to the House Committee on Interior and Insular Affairs," Washington, D. C., January 1990, page 2.

We doubt whether the lack of appropriated funds per se would be sufficient to demonstrate the lack of a prudent and feasible way to follow the Council's recommendations. We do feel sure that undue costs attendant upon following the Council's recommendations would be sufficient.

5. Anticipatory demolition

Section 102(b) contains language intended to deny federal assistance to applicants who knowingly demolished National Register properties before applying for federal assistance.

As an example, in Nevada, a National Register eligible building was demolished by an applicant for HUD funds almost immediately before filing his application. Upon receiving the application and an expression of concern from the SHPO, HUD officials visited the site and, seeing no historic property, reasoned that there was no basis for compliance with Section 106 and approved the application.

This subsection, in our opinion, would not apply to a homeowner who voted against a local ordinance and then applied for a Veterans Administration loan. The applicant must have actively taken part in or exercised discretion in allowing a destructive activity, and, moreover, must have done so "knowingly." It would apply to an experienced rehabilitation developer who, prior to applying for federal tax credits and knowing that he could not make the changes he wanted in a building, destroyed the historically significant aspects and then applied for tax credits.

6. Confidentiality of information

The provisions for confidentiality of information in existing law and in S. 1579 apply chiefly to archeological sites, or other historic properties whose significance could be destroyed through looting if its location were public.

On the other hand, the amendment set forth in Section 106 of S. 1579 is necessary to allow for controlled disclosure of sensitive information for planning purposes, where this is determined to be justified by an objective outside party, the Advisory Council.

As an example of the need for this change, a few years ago in Hawaii State and federal highway officials, using Section 304 of the National Historic Preservation Act, withheld information about a complex of prehistoric ruins from a State Representative who was opposed to the highway that would cut through the ruins. We believe there was no reason to think that the ruins, of massive stone construction, were in any danger of vandalism, nor that the State Representative had any interest in vandalizing them. State highway authorities, in fact, were quite explicit about the fact that they wanted to deny him access to the information because he opposed the project.

Citing the same authority, the same officials expressed reluctance to give the Advisory Council access to the locational information. The personal intervention of Members of Congress with the then-Administration of the Federal Highway Administration was required for the Council to get the information.

It does not appear that a Council decision about release of information would be appealable, though presumably the regulations to be promulgated by the Council would provide for the appeal of decisions about release made at the staff level to the Council itself. The same regulations would undoubtedly specify how a citizens' group could intervene.

7. Leasing/adaptive use

Section 107 of S. 1579 amends a very similar Section 111 in the National Historic Preservation Act. The purpose is to give federal agencies direction to put under-used, historic properties to income producing uses. The income from the new use would be dedicated to the maintenance costs. This provision should be an income generator rather than a cost to federal agencies.

The key word in Section 107 of S. 1579 is "appropriate." Where an old building simply is not needed by anyone for any reason, it would not be appropriate to provide for its adaptive use. The intent of Section 107 is to avoid situations like that at Fort Defiance, New Mexico. The Bureau of Indian Affairs is allowing a historic building to deteriorate while actively planning the construction of a new school facility that will provide almost exactly the same amount of space in the existing, historic structure.

Agencies will undoubtedly try to portray adaptive use as unduly expensive. The military services, for example, regularly attribute the high cost of maintaining general officers' residences to the fact that many of them are historic. In fact, such costs result in large part from the fact that as officers rotate through assignments they require frequent renovation of their quarters. When realistically compared to new construction, however, adaptive use is almost always less expensive. If agencies carried out the requirement of Section 107 thoughtfully, agencies should save money.

8. US preservation actions abroad

Section 108 of S. 1579 is an improvement of Section 402 of the National Historic Preservation Act. The purpose of Section 402 is to set a historic preservation standard for American governmental actions abroad. Since federal agencies tend to do nothing at all to identify historic properties subject to effect by overseas actions, or to address them in planning, and since there are no procedures by which agencies report what they do in this regard, it is difficult to find examples.

However, at the second New World Conference on Rescue Archeology in the mid-1980's held in Dallas, Texas, a number of Latin American archeologists complained about actions by the U. S. military, notably in Honduras and Costa Rica, that had either destroyed known archeological sites or had undertaken projects in archeologically sensitive areas without prior efforts to identify the presence of such sites. The Advisory Council contacted the Department of Defense about this, an investigation was promised, but no report was ever provided.

More recently, destruction of historic properties by Department of Defense Civic Action Teams has been reported in the Federated States of Micronesia by historic preservation specialists conducting the Micronesian Resources Study (P.L. 99-658 and P.L. 100-102).

Although the Advisory Council has stated that Section 106 of the National Historic Preservation Act applies to federal actions in the Federated States and other freely associated Micronesian states, the Department of the Interior and other federal agencies take the position that Section 106 does not apply; only Section 402 governs agency actions there. Apparently construction projects by Civic Action Teams, and possibly other projects carried out with U. S. assistance, are going forward, ignoring Section 402, without providing for identification and protection of historic properties.

9. Endangered properties list

The need for an endangered properties list has come up over and over again in discussions among preservationists in terms of long term planning for preservation. The National Trust has been one of the organizations prominent in discussions of identifying threatened properties, including their "11 most endangered historic properties" list.

National Park Service staff has also discussed the need to have information on the current condition of National Register properties.

Compiling the first "endangered" list would be the most labor intensive requiring, possibly, the equivalent of one FTE for one year, roughly $30,000. The National Conference is sure that the Secretary and the Council would turn to the State Historic Preservation Officers, and their partners at the local level, to assist in compiling such a list.

In 1988, the National Park Service put together an assessment of the needs of the nation's National Register properties. Although not published, the data from this report has been most useful in understanding the condition of the nation's historic resources.

10. Viewsheds and National Historic Landmarks

The Secretary of the Interior already notifies all property owners within the boundaries of a property that is being proposed for National Historic Landmark designation. (The History Division of the National Park Service, who runs the National Historic Landmark program, would have access to exact figures on the cost of owner notification.) The inclusion of "viewsheds" is to ensure that the historic environment is included within the Landmark boundaries. A well known example of a viewshed is the view from Mount Vernon across the Potomac to Maryland.

We do not believe that the language of Section 110 of S. 1579 would require the Secretary to notify all landowners within a historic viewshed of possible National Historic Landmark designation, unless the entire viewshed was to be included within the boundaries of the proposed Landmark.

We do not believe that there would be any implications for a landowner located within a viewshed, except to the extent the local jurisdiction adopted procedures providing for the review of actions within the viewshed. Landmark designation by itself does not affect what can be done with the designated property by any one but a federal agency or a recipient of federal assistance or permits. This is because National Historic Landmarks, once designated, automatically become listed on the National Register and therefore subject to Section 106 of the National Historic Preservation Act.

We assume that viewshed boundaries would be established using the well developed techniques of visual analysis used by the Forest Service, Bureau of Land Management, National Park Service and others. National Park Service is currently working on a pilot project in visual analysis using a computer-based geographic information system. The Advisory Council has also included consideration of view sheds in its computerized preservation management system for West Point.

11. Properties of critical importance

Beginning in the mid-1980's preservation organizations and preservationists, led by the National Trust, began discussing increased protections for an existing class of properties, including the national park system and National Historic and Natural Landmarks. Senator Fowler's bill takes the approach of setting up protection provisions for this special class of properties and then nominating properties to come under the stronger protection.

It is a preservation maxim that the stronger the protection the more careful one is in proposing properties for that sort of protection. We expect that 10 to 12 properties would be put under these protections initially. There are a few properties in this country--Mount Vernon, the Cahokia Mounds--that are so important that virtually all Americans would agree that they merit extraordinary protections.

Section 111 contains strong protections. Section 111 would affect the actions of private property owners. But, what if the Mount Vernon Ladies Association decided to demolish Mount Vernon? Before becoming subject to those protections, the property would undergo a public nomination process, including owner notification.

The cost of implementing this provision is difficult to estimate. It is possible that the enactment of Section 102(a), requiring federal agencies to demonstrate that no feasible and prudent way exists to follow Council comments, will reduce the number of cases coming before the Council and free up staff time to address the section on properties of critical importance. The process of nominating properties to this special category would involve staff time and notification costs. The process of carrying out the enforcement provisions of the section, which we anticipate would occur infrequently, would require the time of Council attorneys.

12. Changes to ARPA permitting process

The joint issuance of ARPA regulations by the Secretaries of Agriculture, Interior and Defense and the Chairman of the Board of the TVA is an "artifact" of the implementation of the Antiquities Act of 1906. When these regulations were issued Agriculture, Interior, Defense and TVA were the major landholding agencies. Today there are many other land managing agencies-- the Department of Energy, the Department of Commerce, and such independent agencies as the Resolution Trust Corporation--to which the terms of ARPA apply. A law that is applicable to all federal agencies should be implemented through regulations applicable to all, not regulations issued only by, and most applicable to, a limited number of agencies. Issuance of regulations by the Council would also make it possible to coordinate ARPA and NHPA implementation. Currently, a given federal action will require review under both Section 106 of the National Historic Preservation Act and ARPA resulting in confusion, sometimes contradictory requirements, undue paperwork and delay.

In terms of Senate and House review of regulations, the National Conference understands that the Supreme Court ruled "one house vetoes" unconstitutional. However, the National Conference would support the continuation of providing the Senate and House with advance copies of regulations.

13. Gubernatorial permits omissions

We do not believe that "carte blanche" was the intent of the drafters; the Senator seems to have found a drafting error which should be corrected.

14. Deletion of ARPA Section 5

We believe that Section 121 was designed to replace the Section 5 provision with a more flexible approach with wider applicability, but the language here may not be effective in doing so. This section deserves further scrutiny.

15. Arrowhead collecting

Section 115 of S. 1579 deletes the existing ARPA provision dealing with arrowhead collecting. The collecting of arrowheads is a problem for the analysis of archeological sites. Scatterings of artifacts on the surface of the ground can provide important information in themselves and are often key indicators of the presence of an archeological site under the ground. Artifacts on the surface of the ground are federal property as are artifacts beneath the surface. Archeologists maintain that to exempt arrowheads from ARPA condones the taking of federal property and prevents the protection of what may be significant archeological resources.

The State Historic Preservation Officers believe that the protection of archeological resources depends on the interest and support of the general public.

The ARPA penalties, we understand, are sufficiently flexible to assure that citizens would not be unduly penalized for picking up arrowheads from the surface of the ground. No person may be assessed a civil penalty without being given notice and an opportunity for a hearing. Federal land managers may remit or mitigate civil penalties. The amount of any penalty must be commensurate with the commercial value of the resource and the cost of restoration and repair. We understand that a civil penalty may be no more than a written warning which is similar to a warning ticket for a traffic violation but which does serve as a deterrent for future violations.

16. ARPA enforcement

Section 115 of S. 1579 does not simply remove procedures for civil penalties; it replaces them with civil penalties having broader application. The NCSHPO is unsure as to why procedures for judicial review have, apparently, been removed. Because the penalties are applied more broadly than just to the ARPA provisions it is appropriate to place the Council, with its broad review and oversight authorities in the position of promulgating relevant regulations.

17. Archeological research priorities

In the early 1980's, the General Accounting Office pointed out the need for federal agencies to improve the cost-effectiveness of their archeology programs by ensuring that excavations were designed to address significant, not trivial, research topics. The GAO recommended that the Advisory Council require agencies to do this, but the Council lacks the authority to impose such a requirement. The SHPOs, the Council and Interior have tried to encourage agencies to focus their archeological research on significant topics with only marginal success. Excavations designed to mitigate the impacts of undertakings under Section 106 of the National Historic Preservation Act and other authorities continue in many cases to be aimed only at addressing such relatively trivial questions as how old a given site is or what kinds of activities went on there. Section 116 of S. 1579 is an effort to move forward on GAO's recommendation.

While some costs would be involved in creating research topics, and in organizing incoming data from excavations and other projects to address them, these costs would be at least balanced by the improved cost effectiveness of federal data recovery efforts. In addition, the more focussed data recovery efforts would supplement federal investments in both "pure" and applied research through such agencies as the National Science Foundation.

One research topic that is currently being pursued by a number of archeologists, for example, is that of reconstructing past climatic changes, with an eye toward predicting long-term climate change cycles in the future. This topic is of obvious relevance to studies of global warming and the effects of pollutants on the ozone layer, as well as to long-range land and water resource planning. Many projects being carried out to comply with Section 106 of the National Historic

Preservation Act could address this topic, but without some sort of national coordination, few of them do. Further, no mechanism exists for compiling and comparing results in the manner needed to address the topic systematically.

Archeology is singled out for attention in this section because archeological sites are by definition significant largely, or wholly, for purposes of research. A commonly used, but sometimes expensive, way of mitigating project effects on archeological sites is to excavate them for the purpose of research. Historians, architects, anthropologists, folklorists, and others who participate in historic preservation are most often involved in identifying and evaluating historic properties and seeking ways for them to be preserved in place, often with an eye to an economic (increased tax base, job creation) or social (housing) benefit. Archeologists uniquely participate in the destruction of historic properties and their translation into paper products, reports, that are intended to be useful in research. Archeologists are frequently criticized by federal agencies and others because of the costs involved in their work and the sometimes marginal research results such work sometimes produces.

18. Advisory Council and international antiquities conference

Organizing the International Conference on Antiquities Trade, as found in Section 117 of S. 1579, is consistent with the Council's broad advisory role within the federal government. No other agency has an equivalent role or perspective for inter-agency coordination in historic preservation.

The Council does customarily deal in matters of international interest, for example, U.S. participation in ICOMOS and ICCROM, but its broad and deep relationships with federal agencies and SHPOs also gives the Council the basis for understanding the domestic end of the artifact market, and its composition ensures a view that balances international and domestic concerns as well as scientific, artistic, historical, and commercial interests.

The difficulty with using an institution that deals more exclusively with matters of international interest is that such institutions typically are not very knowledgeable about the domestic market, and treat the problem of trafficking largely as an import problem rather than one with import, export, and domestic features.

Moreover, such institutions often have very narrow mandates; for example the Cultural Property Advisory Committee is essentially concerned only with implementation of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, an international agreement of very limited scope and effect.

The NCSHPO would estimate that such a conference would cost under $100,000.

19. Artifact registration cost

The cost of implementing the artifact registration program would depend on how rapidly the program was set up, and on the seriousness with which the Advisory Council addressed the requirement that the program "incorporate and not duplicate existing catalog systems...." All artifacts recovered in the course of archeological work carried out under ARPA and NHPA today are "registered" in the sense of being entered in a catalogue maintained by whatever institution exercises curatorial responsibility for them. If the national registration system were established in stages, and simply incorporated existing systems and established a mechanism for centralized record keeping, it should cost very little, and most if not all costs should be easily absorbed into regular budgets for surveys and data recovery operations.

20. Abandoned Shipwreck extension to Exclusive Economic Zone

Since the Exclusive Economic Zone lies outside the area in which title to shipwrecks and archeological resources is transferred to the States by the Abandoned Shipwreck Act, it would be the responsibility of the federal government to manage them under Section 123 of S. 1579. Section 123 is silent on the subject of which agency would bear this responsibility. As we see it, nothing would necessarily be done with the shipwrecks, and the Park Service would not be expected to locate and protect them. Section 123 merely provides a means by which the federal government can regulate access to shipwrecks and other archeological resources within the Exclusive Economic Zone, and hence ensure that such resources, if they are exploited by treasure salvors or others, are excavated and conserved in a manner consistent with responsible archeological principles.

The provisions of Section 401 could be carried out at a "bare bones" level within existing levels of Historic Preservation Fund withdrawals with an adjustment of levels of effort in other program areas such as historic site survey, National Register nominations, technical assistance.

23. Advisory Council education initiative

The range of public programs covered by Section 501 of S. 1579 represent ways to address some of the most urgent needs of contemporary preservation.

The fact that historic preservation is not systematically integrated into elementary and secondary school curricula is a major impediment to realizing the goal articulated by Congress in Section 1(b)(2) of the National Historic Preservation Act -- using historic preservation "to give a sense of orientation to the American people." The poor integration of preservation into undergraduate programs in history, architecture, architectural history and anthropology, and the lack of standards for graduate programs in historic preservation and cultural resource management, is responsible for a continuing dearth of well-trained professionals in the field.

The general lack of programs to train workers in preservation-related skills in woodwork, carpentry, masonry, and the decorative arts creates a lack of skilled artisans that artificially inflates the cost of rehabilitation and restoration.

The failure to integrate historic preservation into programs by and for minorities has resulted in a preservation profession that remains predominately white, despite the high relevance of preservation to Afro-American, Native American, and other ethnic minority communities.

The lack of an organized program to involve avocationalists in archeology results in missed opportunities to improve the effectiveness and reduce the costs of archeological programs, and tempts avocationalists to express their interest through becoming artifact collectors, to the detriment of the archeological resource base.

All sectors of the preservation community have urged a larger federal role in preservation education. The National Trust for Historic

The costs associated with this provision would be those required to administer a permitting process to review applications from salvors to work on shipwrecks in the EEZ.

21. Tribal preservation programs

The source of funds for the new tribal programs would be the Historic Preservation Fund. Congress would need to increase the current level of appropriations from the Fund to accommodate the tribal programs. Since the State historic preservation programs are operating at a "bare bones" level, it would be detrimental to take the costs of the tribal preservation programs from the matching appropriations now provided to the States.

The cost of tribal programs is dependent on the extent of a preservation program a tribe wishes to undertake. S. 1579 makes it possible for a tribe to undertake a part of the preservation program such as Section 106 reviews on tribal lands and let the SHPO continue to conduct survey and National Register nominations on the same tribal lands.

In response to direction provided in Senate Report 101-85, the National Park Service is currently completing a study of funding needs for tribal historic preservation programs. The National Conference of State Historic Preservation Officers and the individual SHPOs have participated in this study. Although the report of the study has not yet been released by the Interior Department, discussions during its development have suggested that tribal program funding needs range somewhere between $10 million and $20 million.

22. Local government participation

The expansion of the participation of local governments as partners in the preservation program contained in Section 401 of S. 1579 would be funded through the States' annual allocation from the Historic Preservation Fund. Additional appropriations from the Historic Preservation Fund are needed, as preservationists and the SHPOs have maintained, to address the demonstrated needs of America's historic properties. Increases in the Historic Preservation Fund appropriations will increase the number of local governments and the number of preservation projects assisted by State Historic Preservation Offices.

Preservation has conducted studies defining preservation education needs and is working toward establishing a heritage education center in Waterford, Virginia.

The funds for the Advisory Council's education initiative would come from the federal budget. The estimated costs depend on the level of effort proposed. We would imagine that a national education program could be run for $1 million annually.

Malcolm Wallop

Questions by Senator Malcolm Wallop
for the National Conference of
State Historic Preservation Officers
on S. 1578

1. The first sentence of Section 5(c) prohibits the Preservation Agency from owning and managing land. The second sentence, however, states that the Agency is to transfer to an appropriate public or private owner real property which it acquires. Would the agency therefore acquire real property without owning it? By what means would the agency acquire real property? Would it transfer property at fair market value?

2. Section 8 would establish a National Center for Preservation Technology within the Preservation Agency. The Agency Administrator would appoint an Executive Director, who would in turn appoint and fix the salaries of employees of the Center. Would the Executive Director and staff be employed under the Federal competitive civil service? What would be the overall cost of establishing and operating the National Center for Preservation Technology?

3. Section 8(h) would authorize the National Center for Preservation Technology to establish regional preservation technology centers around the nation. The centers would perform analytical or technical research functions and provide other services. How would these technology centers be funded? What is your estimate of the cost of this provision?

4. Section 9 would transfer to the newly created Preservation Agency all functions and authorities of the Cultural Advisory Committee. The Cultural Advisory Committee now works with the U.S. Information Agency in evaluating requests for U.S. import restrictions on archaeological or ethnological material of other countries, a task which requires thorough knowledge and understanding of diplomacy and international protocol. In what way do you feel the Preservation Agency would be better qualified than USIA to oversee this function?

Malcolm Wallop

Questions by Senator Malcolm Wallop
for the National Conference of
State Historic Preservation Officers
on S. 1579

1. In the Section 2 "findings" of S. 1579, subsection 1(b)(9) states that it is "necessary and appropriate for the Federal Government to compensate State and local governments and Indian tribes for carrying out the Federal preservation program." Do you believe historic preservation should be primarily a Federal responsibility? Do you think state and local governments and Indian tribes should be compensated for performing various aspects of that Federal function? Or do you believe that this program should be a "partnership" in which the Federal Government provides financial "assistance" to its partners? What is your view on this change?

2. Section 101 of S. 1579 prescribes in great detail the procedures by which Federal agencies are to carry out their historic preservation responsibilities. In many cases the procedures are taken from existing regulations, or could be instituted as regulations rather than law. Why is this level of detail necessary? How will this codification affect agency flexibility? Do you believe that we would be legislating form and process rather than objectives and goals?

3. Section 101 requires Federal agencies to identify and evaluate all of the properties under their jurisdiction or subject to direct or indirect effect by agency plans, assistance or licensing, which appear to qualify for listing on the National Register; to protect, stabilize, rehabilitate, or restore all those properties; and to implement a preservation maintenance plan for all those properties. What is your estimate of the cost of putting these provisions into effect?

4. Section 102 amends the Section 106 consultation process which agencies must follow when their projects might affect historic properties. S. 1579 includes a new provision whereby, in those instances when an agency does not agree with the Advisory Council's recommendations, the agency must demonstrate that there is no prudent and feasible way to follow the Council's final recommendation. Do you believe that this would result in a burden of proof being placed on the agencies? Since failure to reach agreement between the

agencies and the Advisory Council/SHPO occurs so infrequently (8 to 10 in 100,000 cases) under current procedures, why is it necessary to impose this additional burden? Would lack of appropriated funds be viewed as adequate demonstration?

5. Section 102 also would prohibit an agency from granting a ~~loan,~~ loan guarantee, permit, license or other assistance to an applicant who, at any time prior, engaged in an activity which adversely affected an historic property to which the Federal assistance would relate; or, being in a position to prevent it, allowed such activity to occur. This provision could lead to additional administrative burdens for the agencies, not to mention investigations into an applicant's past behavior and motivation. How is this provision justified? How would this be enforced? For instance, would a homeowner who either voted against or failed to vote for a local ordinance to preserve historic properties be barred from receiving a Veterans Administration loan?

6. Section 106 amends current provisions under which Federal agencies are to withhold information about historic resources if they believe disclosure to the public may create significant risk of harm to the resources. When a Federal agency has determined that information should be withheld, the new language would allow the Advisory Council to overrule the agency and determine who may have access to the information. Why is it necessary to allow the Advisory Council to overrule the agencies in such matters? Can you give some examples of when it might necessary? Could the agency appeal the Council's decision? How could a citizen's group intervene?

7. Section 107 would require Federal agencies to establish and implement adaptive use alternatives for historic properties which are not needed by the agency. This might be very costly to the federal government. Why do you think this provision is necessary? What would happen when an old building simply was not needed by anyone for any reason? Would the responsible agency have to put money into maintaining it? What is your estimate of the cost of implementing this provision?

8. Section 108 amends Section 402, which deals with agency activities overseas, and creates new tasks for agencies to perform when they are involved in overseas projects. In the briefing material we received, it says that this is necessary because, "in its absence, no Federal agency has taken substantive steps to comply with the existing Section 402." Can you give us some examples of Federal projects which have had adverse effects on important historic properties overseas, and which might have been avoided if

these new provisions were in effect?

9. Section 109 amends Section 101 of the National Historic Preservation Act, dealing with the National Register of Historic Places. It creates a number of new procedural requirements for Federal agencies. Among them is a requirement in (a)(2)(J) that the Advisory Council and the Secretary of the Interior, at least once every three years, review threats to National Register properties. There are now in excess of 50,000 National Register sites, and an incalculable number of sites eligible for the National Register. Why do you believe that this measure is necessary? Is it the intent of this section to require a review of each of these tens of thousands of sites at least once every three years? What would be the staff requirements to do this? What is your estimate of the cost of implementation of this provision?

10. Section 110 would add a new Section 8 to the Historic Sites Act requiring, among other things, that "viewsheds" be taken into account when establishing the boundaries of National Historic Landmarks. It also requires notification of the owner of property when the property is being considered for designation as a National Historic Landmark. Do these two provisions together mean that the Secretary of the Interior may be placed in the position of having to provide legal notice to, in some cases, the hundreds of landowners within a historic viewshed? If so, has an estimate been made of the cost of implementing this procedure? What are the implications for a landowner who happens to be located within a viewshed? How would the boundary of a viewshed be determined?

11. Section 111 would create a new category of historic properties, (i.e., Historic Properties of Critical Importance,) and would require the Advisory Council to develop criteria and standards for identifying and protecting such properties. The Advisory Council would have to monitor these properties (many of which may be in private ownership), and diligently review activities that might threaten them with harm. If the Advisory Council thinks a project receiving any form of Federal assistance may threaten one of these properties, the Council may unilaterally and indefinitely suspend Federal approval. Furthermore, the language in Section 111 suggests that the Advisory Council may seek and obtain a permanent injunction against private activities -- totally independent of any Federal involvement -- which may threaten a critical historic property. What is your estimate of the number of Historic Properties which are likely to be placed in this new category? What is the expected cost of implementing this new provision? Would this prevent a private citizen

from altering his own property if it is a critically important property? If so, are there any provisions to compensate the citizen for the loss of use of the property? Might "viewsheds" be included among Historic Properties of Critical Importance?

12. Section 114 makes extensive changes to the Archaeological Resources Protection Act provisions dealing with archaeology on Federal and tribal lands. The new Section 4(a)(1) would have the Advisory Council promulgate regulations for the issuance of ARPA permits. Under current law, the regulations are announced jointly by the Secretaries of Interior, Agriculture and Defense, and the Chairman of the Board of the TVA, and must be submitted to the appropriate Senate and House committees at least 90 days before they take effect. How do you feel that the proposed changes would improve the procedures which are now in effect? Why would it no longer be appropriate for the Senate and House Committees to be given the opportunity to consider the regulations before the regulations are put into effect?

13. Section 114 would retain in Section 4(g) a provision that requires an agency to issue a permit to anyone to excavate on public lands on receiving written request from the Governor of a State; but deletes all previous requirements that the recipient comply with the standard requirements of such permits. Those standard requirements include stipulations that recovered resources remain the property of the United States; that the activity be consistent with Federal land management plans; that the permit be suspended or revoked for cause; or that tribal consent be given for activities on Indian lands. This new language seems to take a sort of carte blanche approach to the permit process. Do you feel that the intent is to delete any reference to permit conditions? How would this new procedure adequately protect the interests of the United States?

14. Section 114 deletes Section 5 of current law, which authorizes the Secretary of the Interior to regulate the exchange or other disposition of archaeological resources removed from public lands and Indian lands. Would this prevent such exchange between universities, museums and scientific institutions in the future? Or would this not regulate it?

15. Section 115 would replace all of ARPA's current language dealing with prohibited acts, penalties and rewards. Under current law, no civil penalty may be assessed for the removal of arrowheads located on the surface of the ground; Section 115 would delete the existing provision. Does this mean that citizens could be prosecuted for picking up stray arrowheads found on the surface of any public lands? Has

this type of activity been a problem for our Nation's archaeological heritage? If so, how?

16. Section 115's new provisions would remove from ARPA the procedures now in place for civil penalties to be imposed by land managing agencies, and procedures for judicial review of civil penalties. It would also remove from ARPA any reference to the land managing agencies' responsibility for enforcement actions against those who engage in illegal activities, and place the Advisory Council in the role of promulgating regulations for the assessment and collection of fines. In you view, why is it necessary to remove from the regulatory process those who are now charged with enforcing the law, or to abandon the guidance we now give them through ARPA? Do you believe the Advisory Council to be in a better position than the land managing agencies to oversee a law enforcement function? If so, why? What are the implications of these changes for the land managing agencies? Why is it not sufficient for the Advisory Council to simply advise, as they have done in the past?

17. Section 116 adds to ARPA a new Section 15, creating a mechanism for identifying archaeological research priorities. It would result in another advisory board, special study groups, and Regional Archaeological Review Groups. Do we need to create these new institutions? If so, why? What would it cost to create them, and who would pay that cost? Is there justification for singling out institutions for archaeology, rather than those for history, anthropology, folklore, or any other aspect of our Nation's interest in the past? Why is archaeology singled out in this legislation?

18. Section 117 calls for the Advisory Council to organize an International Conference on Antiquities Trade. Is this an appropriate function for the Advisory Council, rather than for other institutions, especially those that more customarily deal in matters of international interest? What would you estimate the cost of the Conference to be?

19. Section 121 creates a new program requiring the registration of artifacts removed from archaeological sites in the United States and abroad. This may help us to gain better control over looting and illegal trafficking in artifacts. Can you estimate what the cost of this new program would be?

20. Section 123 would amend the Abandoned Shipwreck Act by having the United States assert title to shipwrecks (historic or non-historic, abandoned or non-abandoned) and archaeological resources embedded in or lying on the seabed in the Exclusive Economic Zone. What would be done with these shipwrecks? Who would manage them and for what

purpose? Would the Park Service be expected to locate and protect them? What would be the cost of implementing this program?

21. Section 301 authorizes establishment of formal Tribal historic preservation programs, treating tribal preservation interests similar to state preservation interests. It is not clear, however, what the source of funds for these new programs would be. Would they come from the current State allocations? Or would they require new, additional appropriations? If so, how much would they cost?

22. Section 401 expands the role of local governments which choose to be partners in the field of historic preservation. Would all costs associated with this expanded program come from within existing State allocations, or would the Federal government be expected to come up with additional funds for this program?

23. Section 501 would create an ambitious new education and training program to be implemented by the Advisory Council. It would create new opportunities for avocational archaeologists, historically Black colleges and universities, tribal colleges, and elementary and high schools. Why is there a need for a program of this scale as proposed in this bill? What would you estimate the cost of such a program to be? What would be the source of funding?

Questions by Senator Wallop

for the Advisory Council on Historic Preservation

on S. 1579

Question. Section 102 would prohibit an agency from granting a loan, loan guarantee, permit, license or other assistance to an applicant who, any time prior, engaged in an activity which adversely affected an historic property to which the Federal assistance would relate; or being in a position to prevent it, allowed such activity to occur. This provision could lead to additional administrative burdens for the agencies, not to mention investigation into an applicant's past behavior and motivation. How is this provision justified? How would this be enforced?

Answer. Over the past few years, the Council has learned of a number of instances where an applicant for Federal assistance has purposely destroyed a historic property before applying for the assistance, with the intention of avoiding any consideration of historic preservation factors as required by Section 106 of the National Historic Preservation Act. In some cases, the application for Federal assistance has actually been pending and the agency had initiated the Section 106 process.

This practice, which the Council has termed "anticipatory demolition," frustrates the purposes of the historic preservation review process. Currently, there is no recourse when such an action takes place. Indeed, many agencies that might consider denying Federal assistance because of the applicants actions are unsure of their authority to do so under current law.

Section 102 would rectify this situation, but in a manner that we think is too inflexible. Rather than prohibiting assistance unless an affirmative finding of "clemency" is made, we believe that Federal agencies should be given clear but discretionary authority to withhold assistance when they determine it is appropriate. This would resolve the current question about agency authority, positively address a real problem and avoid administrative burdens, unfairness and enforcement problems.

Question. Section 106 amends current provisions under which Federal agencies are to withhold information about historic resources if they believe disclosure to the public may create significant risk of harm to the resources. When a Federal agency has determined that information should be withheld, the new language would allow the Advisory Council to overrule the agency and determine who may have access to the information. Why is necessary to allow the Advisory Council to overrule the agencies in such matters? Can you give some examples of when it might be necessary?

Answer. We have, on occasion, encountered situations where inexperienced or contrary-minded Federal agency personnel have recommended withholding disclosure of site locations or descriptive information about sites to parties with bona fide and legitimate interests and needs for the information. For example, under the Section 106 review process administered by the Council, parties to the consultation process engaged in negotiating solutions to projects which may adversely affect historic properties are entitled to basic documentation concerning properties that may be affected, the potential effects on them, alternatives that could avoid, minimize, or mitigate the effects, and so on. State agencies, local government officials, Native American groups, and others may have legitimate needs for such planning information, as may consultants working on other projects in the immediate area. Rather than overruling the agency per se, Section 106(b) would allow the Council to condition and qualify an agency's confidentiality decision where the Council determined it was consistent with the purposes of the Act to do so.

Question. Section 107 would require Federal agencies Federal agencies to establish and implement adaptive use alternatives for historic properties which are not needed by the agency. This might be very costly to the federal government. Why do you think this measure is necessary.

Answer. Current provisions of Federal law encourage the reuse of historic buildings by Federal agencies, but do not require it. In practice, this encouragement is rarely effective in achieving the objective of serious consideration of reuse options. Our experience with reviewing agency proposals for disposal or demolition of federally-owned historic properties suggests that the norm in the Federal decisionmaking process is to determine a building is no longer suited for its current use and then plan for its replacement, with little thought given to alternative uses for the historic building. The Council is then confronted in the Section 106 process with a proposal for demolition of the historic structure, supported by the agency's finding that it has no economic use for the building.

Section 107 addresses this problem, but in a manner that we believe is too inflexible. Adaptive use in Federal ownership is not always the best solution for a property, often for preservation as well as economic or agency mission reasons. We can support the objective of Federal agencies giving more serious consideration to reuse alternatives, but the requirement to reuse should not be absolute.

Question. Section 108 amends Section 402, which deals with agency activities overseas, and creates new tasks for agencies to perform when they are involved in overseas projects. In the briefing material we received, it says that this is necessary because, "in its absence, no Federal agency has taken substantive steps to comply with the existing Section 402." Can you give us some examples of Federal projects which have had adverse effects on important historic properties overseas, and which might have been avoided if these new provisions were in effect?

Answer. We are unable to do so, although the reason for that is not necessarily that such impacts have not occurred, but rather the current system provides no way for the Council to learn of these situations.

Question. Section 109 amends section 101 of the National Historic Preservation Act, dealing with the National Register of Historic Places. It creates a number of new procedural requirements for Federal agencies. Among them is a requirement in (a) (2) (j) that the Advisory Council and the Secretary of the Interior, at least once every three years, review threats to National Register properties. There are now in excess of 50,000 National Register sites, and an incalculable number of sites eligible for the National Register. Why do you believe that this measure is necessary? If so, what would you estimate the cost of implementation to be?

Answer. We believe the measure is useful because there currently is no systematic effort being made to assess threats to National Register properties and establish useful information and priorities for protection strategies and resource allocation. There are many different ways that such a review could be undertaken. They range from the current efforts of the National Trust to identify the dozen or so most endangered properties in the country to State by State assessment of threats conducted by the respective State Historic Preservation Officers to a survey of the threats in a generic, non-property specific way. Each would have its utility and would vary dramatically in cost.

Question. Section 113 amends the definition of "agency" to delete a reference to agencies that may be exempted from any and all requirements of the National Historic Preservation Act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties. What programs or agencies to date have met the Advisory Council criteria for exemption? If there are exempted agencies, has this caused significant problems such that they should no longer be exempted? How is the procedure now in place so subject to abuse that it should be abolished by this legislation?

Answer. No agency has sought an exemption under Section 214 of the NHPA for itself or any of its programs.

Question. Section 114 makes extensive changes to the Archaeological Resources Protection Act provisions dealing with archaeology on Federal and tribal lands. The new Section 4(a) (1) would have the Advisory Council promulgate regulations for the issuance of ARPA permits. Under current law, the regulations are announced jointly by the Secretaries of Interior, Agriculture and Defense, and the Chairman of the Board of the TVA. Do you feel the Secretaries and the TVA chairman have done an unsatisfactory job in promulgating regulations? If so, why? Do you feel the Advisory Council could perform the function in a more effective manner? If so, why?

Answer. The transfer of this authority to the Council is, we believe, part of the overall thrust of the bill to substitute the Council for the Department of the Interior in many program administration areas. We do not believe this is appropriate in this case or in many of the others.

Question. Section 114 would retain in Section 4(g) a provision that requires an agency to issue a permit to anyone to excavate on public lands on receiving written request from the Governor of a State; but deletes all previous requirements that the recipient comply with the standard requirements of such permits. Those standard requirements include stipulations that recovered resources remain the property of the United States; that the activity be consistent with Federal land management plans; that the permit be suspended or revoked for cause; or that tribal consent be given for activities on Indian lands. This new language seems to take a sort of carte blanche approach to the permit process. How would this new procedure adequately protect the interests of the United States?

Answer. We would hope that this is an unintentional oversight. We believe that requests from the Governor of a State should in fact include the same "consistency" finding as contained in Section 114(d) for Indian tribes. We would recommend that the language of Section 114(g) be amended accordingly to be consistent with the language in Section 114(d).

Question. Section 117 calls for the Advisory Council to organize an International Conference on Antiquities Trade. In what manner is this an appropriate function for the Advisory Council, rather than for other institutions, especially those that more customarily deal in matters of international interest? What would you estimate the cost of the Conference to be?

Answer. The Council does have a unique role in the Federal government for examining policy issues that involve many disciplines and interests, affect both the public sector and the private sector and would lead to recommendations for legislative and administrative action. Its membership reflects a mix of preservation experts and program administrators, Federal agencies, State and local government executives and representatives of the general public. This balanced composition assures an objective look at issues that affect public and private interests in varied ways. The Council also has authority and experience in dealing with the international dimensions of historic preservation. Conducting such falls well within the authority and capability of the Council.

With regard to the cost of such a conference, we would be unable to make an estimate without substantial further study.

Question. Section 501 would create an ambitious new education and training program to be implemented by the Advisory Council. It would create new opportunities for avocational archaeologists, historically Black colleges and universities, tribal colleges, and elementary and high schools. Why is there a need for a program of this scale as proposed in the bill? What would you estimate the cost of such a program to be?

Answer. Education and training are recognized by the Council and the preservation community at large as being essential to the long-term success of the national historic preservation program. Our own efforts, extremely modest by comparison to the proposal, have reaped benefits that far outweigh the investment. Section 501 would give new prominence and impetus to training and education, emphasizing the positive side of the program. It would provide new techniques and alliances to advance the concept of heritage preservation throughout society.

Clearly, a program of the scope envisioned in the bill could be conducted at varying degrees of financial commitment and we would not be able to put a realistic price tag on it. One thing we would note is that this authority would provide an impetus to the use of existing education and training programs to advance preservation objectives, without the infusion of substantial new funding.

APPENDIX II

Additional Material Submitted for the Record

Senate Subcommittee on Public Lands, National Parks and Forests
Central of Georgia Railroad Complex
Savannah, Georgia

Submitted by
William E. Gardner, Jr., President
Savannah State College
Savannah, Georgia

Savannah State College is the first and oldest public college founded for blacks in the State of Georgia and is listed as an historic landmark by the Georgia Historical Society. The College was also the first black land-grant institution in the State of Georgia from 1890-1949 until that land-grant status was passed on to Fort Valley State College in 1950.

The College has several threatened historic structures on its campus. Hill Hall is the most significant.~~historic building~~ on the campus.

Hill Hall is the only building on the campus extent from the administration of Richard R. Wright, the first president of Savannah State College. It was built in 1901 by Georgia State Industrial College students under the direction of Lewis B. Thompson, Georgia State College Class of 1899, who was the Director of the College Trades Department, and Joseph Himes, Instructor in Blacksmithing, Trades Department.

The building is one of the finest examples of Greek Revival architecture in the southeastern United States. Additionally, Hill Hall is listed in the *National Register of Historic Places*.

In 1985, the Office of Development, Savannah State College, initiated a proposal for $5,590 that was funded by the National Endowment for the Arts. The funds were used to develop an historic rehabilitation plan for Hill Hall. Faculty members developed the proposal which allowed Hill Hall to be placed on the National Register of Historic Places. Currently, Hill Hall is number two (2) on the overall capital improvements list of Savannah State College. Hill Hall is the most important and historic structure on the campus. It must be preserved because of its historical significance to the campus, city of Savannah, and the State of Georgia.

Currently, Hill Hall is one of eleven finalists in the Historically Black Colleges and Universities Historical Site Preservation Program - Office of National Park Service - U.S. Department of the Interior.

There is also a plan to create an historic district at Savannah State College to include five structures on campus designed by Antonio Orsot, Savannah State College professor, in the 1930s. These buildings are: A.A. Pratt Adams Hall, Charles Herty Hall, Willie Powell Hall, and Willcox Gymnasium. Hammond Hall, built in 1915, is also to be included in this historic district.

The history of Savannah State College is significant and is important to Savannah and the State of Georgia. The College will celebrate its centennial on November 26, 1990.

It is significant to note that two presidents of the United States visited the College between 1898-1912.

In December 1898, President William McKinley visited the campus and spoke to students and faculty in the original Meldrim Hall which was destroyed by fire after 1898.

Richard R. Wright and Peter Meldrim brought President William Howard Taft to the campus on May 1, 1912 where he toured the grounds and spoke to students in Meldrim Hall and in front of the Walter B. Hill Hall. On that date, President Taft brought to the campus in his official party the following persons: Joseph M. Brown, Governor of Georgia; Reverend M. Ashby Jones of Augusta, Georgia; W. Burke Cockran of New York; and Peter W. Meldrim, Chairman, Georgia State Industrial College Board of Commissioners, and President of the Hibernian Society in Savannah, Georgia; and George Tiedeman, Mayor of Savannah.

It is also interesting to note that Richard R. Wright, the first president of the College, was a member of the first College class of the Atlanta University graduating in 1876. Richard R. Wright was also immortalized in John Greenleaf Whittier's poem "The Little Black Boy of Atlanta" as a result of this reply as a young former slave lad to General O. O. Howard of the Freedman's Bureau after the Civil War on what to tell the people of the north about the Southern Blacks. He told General Howard - "Just tell them we are rising."

In 1990, the College stands on the cutting edge of the area's academic and economic development. The preservation of historic structures is a top priority at Savannah State College.

Specifically, the College wholeheartedly supports Senator Wyche Fawler's sponsorship of S.1578, Historic Preservation administration Act and S.1579 the National Historic Preservation

Policy Act. The S.1570 Act has specific emphasis on historic preservation at HBCUS. This impinges on and will enhance the College's efforts to restore historical Hill Hall and create an historic district on campus.

2/20/90 PTK

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NEW JERSEY COUNCIL
OF DIVING CLUBS
414 GREEN GROVE ROAD
NEPTUNE, NEW JERSEY
07753

Committee on Energy and Natural Resources
U.S. Senate
Washington, D.C.

Dear Committee Chairman and members:

The following comments are directed at S1579 as it pertains to shipwrecks and so called underwater archaeological resources, and to the amendment of the Abandoned Shipwreck Act to extend the National Historic Preservation Act and the Archaeological Resources Act of 1979 to 200 miles offshore.

In 1988 the Abandoned Shipwreck Act was passed and called for a partnership among sport divers, fishermen, archaeologists, salvors and other interests to manage shipwreck resources of the States and United States. In other words, it called for the utilizers of the resource to have a direct say in the management of shipwrecks.

S 1579 has no such partnership concept. It designates the Advisory Council of Historic Preservation or in some cases the Archaeology Advisory Board as sole authority on policy for shipwrecks and underwater artifacts. The last time I checked, not one person on the Advisory Council of Historic Preservation dived or had ever seen a shipwreck.

The fact is that 99% of the people that actually see shipwrecks are divers or connected with the sport diving community. Sport divers find and identify most historic and non-historic shipwrecks, do most of the mapping of shipwrecks, and on an avocational basis are responsible for much of what you and I call underwater archaeology in this country.

The Abandoned Shipwreck Act stressed the multiple uses of shipwrecks and suggested the management of this resource as a total resource. S 1579 looks at shipwrecks only as a historic or archaeological resource, and ignores the fact that probably only about 5% of shipwrecks will ever end up on the State or National Register.

Furthermore the Abandoned Shipwreck Act set a policy of guaranteeing recreational exploration and always reasonable access to shipwrecks. No such policy is stated in this Bill.

If S 1579 extends the Archaeological Resources Protection Act of 1979 out to 200 miles offshore, it could discourage the reporting and identification of shipwrecks. That is because the Archaeological Resources Protection Act of 1979 is a punative act that sets severe penalities and has no partnership

NEW JERSEY COUNCIL
OF DIVING CLUBS
414 GREEN GROVE ROAD
NEPTUNE, NEW JERSEY
07753

concept. It could make almost all sport divers law violators by providing a very nebulous definition of an archaeological resource. It could directly discourage avocational underwater archaeology and the identification of unknown shipwrecks by prohibiting the removal of any object.

Furthermore, page 58 and 59 of S 1579 suggests that there is a lot of confusion over whether a site or object is a shipwreck or archaeological resource and asks the Secretary of Interior to determine this. You are basically dealing with the same resource with two conflicting bills giving it different names.

Finally, the absurdity of trying to claim all shipwrecks out to 200 miles speaks for itself. The deletion of the abandoned and embedded definitions could cause even bigger legal problems to the government.

To my knowledge, not a single sport diving organization in this country is supporting S 1579. The State of New Jersey has presently introduced shipwreck legislation that is based on a partnership concept and treats shipwrecks as a multi-use resource based on the Abandoned Shipwreck Act. S 1579 has created confusion and alienated the sport diving community at a very critical time.

The N.J. Council of Diving Clubs feels that the amendment of the Abandoned Shipwreck Act is poorly thought out, ill advised, has no partnership concept, and is premature since the Abandoned Shipwreck Act has not been fully implemented or tested at the state level. We ask that all references to shipwrecks or underwater archaeological resources be deleted from S1579 along with any amendment to the jurisdiction contained in the Abandoned Shipwreck Act. Finally , we ask that in the future any bills dealing with the management of shipwrecks at the state or federal level provide the sport diving community a significant say in the management of shipwrecks, and that such bills be worked out in consultation with the organized sport diving community.

Jack Fullmer
R.D. 1, Box 1540
Allentown, N.J. 08501

Ph - home - 609-298-3182
work - 609-984-7533

Sincerely
Jack Fullmer
Jack Fullmer
Chairman Legislative Committee
N.J. Council of Diving Clubs

West Georgia College
Carrollton, Georgia 30118
A SENIOR COLLEGE IN THE UNIVERSITY SYSTEM OF GEORGIA
(404) 836-6454/6455

OFFICE OF THE STATE ARCHAEOLOGIST
208 MARTHA MUNRO

MEMORANDUM

TO: Senator Kent Conrad
Committee on Energy and Natural Resources

FROM: Lewis Larson
State Archaeologist

SUBJECT: Comments on S. 1578 and S. 1579

DATE: May 14, 1990

While I am unable to endorse all aspects of the proposed bills S. 1578 (Historic Preservation Administration Act of 1989) and S. 1579 (National Historic Preservation Policy Act of 1989); I recognize and respect the efforts these bills reflect to reach a compromise between the legitimate interests of archaeologists and Native Americans. I therefore, as urged by William A. Lovis (Chair of the Society for American Archaeology Government Affairs Committee) and Jeremy A. Sabloff (Society for American Archaeology President), support these two bills as written and I will urge my colleagues to do likewise.

I appreciate the efforts of the committee in regard to S. 1578 and S. 1579 and urge a positive recommendation for passage from the committee to the full Senate.

Buddy Roemer
Governor

Paul Hardy
Lieutenant Governor
and Commissioner

State of Louisiana
Department of Culture, Recreation and Tourism
OFFICE OF CULTURAL DEVELOPMENT

Henry A. Truxillo
Secretary

Leslie P. Tassin, Sr.
Assistant Secretary

May 10, 1990

RECEIV
MAY 14 1990
HISTORIC PRESERVATION SECTI

Dr. Elizabeth Lyon
Historic Preservation Section
205 Butler Street, S. E.
1462 Floyd Towers East
Atlanta, Ga 30334

Re: Fowler Bills

Dear Liz:

Nancy Miller of the NCSHPO telephoned me and asked me to write you concerning the material you are compiling for Senator Conrad's hearing. Specifically, she asked for our office's opinion on S 1578 and S 1579. We certainly support S 1579. It would strengthen the program in certain key areas including Section 106. However, we do not support S 1578 because we are pleased with our current relationship with the National Park Service and do not feel that a separate federal agency for historic preservation is either achievable or necessarily desirable.

Best of luck with your hearings in Charleston.

Sincerely,

Leslie P. Tassin
State Historic Preservation Officer

LPT/JF/bc

Jonathan Fricker, Director
Division of Historic Preservation
P.O. Box 44247 (900 Riverside North)
Baton Rouge, LA 70804
(504) 342-8160

The

Society for Georgia Archaeology

S. Dwight Kirkland
P.O. Box 379
Kingsland, Ga. 31548

TESTIMONY BEFORE THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Savannah, Georgia
May 19, 1990

As the voice of the Society for Georgia Archaeology, it is my pleasure to express our support for the two historic preservation bills that Senator Fowler recently introduced in Congress; S. 1578 and S. 1579. Both are bold and innovative pieces of legislation.

We of the SGA believe that the Historic Preservation Administration Act (S. 1578) will provide a more efficient implementation of national preservation policy, and better coordinate the efforts of Federal, State, local, and private agencies and organizations. The resulting independent agency, provided for in the act, whose sole purpose is preservation policy, is long overdue. The creation of a National Center for Preservation Technology is applauded, and should provide better transfer of technologies related to preservation.

We also agree with most of the provisions in the National Preservation Policy Act (S. 1579), although we are cautious of some. Although we do not disagree with that portion of Section 121 which provides for establishment of a new government-sponsored registration of antiquities program to encourage the conduct of scientifically valid excavations, we are cautious of that portion which will endeavor to create a potential market incentive in favor of certified antiquities. Any market for antiquities creates hazards for archaeological resources.

The SGA is also concerned about Section 120 which provides for federal policy on the reburial of human remains and grave-associated artifacts which gives priority to the wishes of living descendents. The key point here is that we believe only descendents that can prove, with reasonable evidence, direct lineage, should be allowed a voice in the reburial of archaeological resources. And each situation should be considered on a case by case basis.

Even though not perfect from our viewpoint, we believe that these two bills represent the best compromise for all parties involved. They certainly are the most desirable pieces of legislation currently being considered by Congress. Therefore, we add our support for their passage.

WRITTEN TESTIMONY

of

William S. Price, Jr.
State Historic Preservation Officer of North Carolina

on the

HISTORIC PRESERVATION ADMINISTRATION ACT

S. 1578

May 19, 1990

before the
Subcommittee on Public Lands, National Parks, and Forests

I am the director of the North Carolina Division of Archives and History which had its beginning in 1903. Our agency administers a broad range of history-related programs for the service of the people of North Carolina. Under state law I am the state historic preservation officer and our Archaeology and Historic Preservation Section serves as the staff of the State Historic Preservation Office. In terms of staffing, programs, and funding we maintain one of the largest state historic preservation programs in the nation. North Carolina has benefitted from participation in the federal preservation program under the National Historic Preservation Act and we look forward to participating in it for many years ahead.

The National Conference of State Historic Preservation Officers (NCSHPO), of which I am a member, presented testimony on S.1578 February 25, 1990. I believe that the conference testimony was an excellent and eloquent presentation of sound reasons why the August 4, 1989, draft of S.1578 should be supported. I endorse the conference's testimony with one important exception relating to the provision for independent agency.

I do not oppose the concept of a national independent preservation agency. Yet, I feel that the wiser course would be to mandate a restructuring of the Department of the Interior that would result in the national historic preservation program being on an equal footing administratively with the National Park Service and natural area programs. I make this suggestion because I fear program disruption in the creation of a new agency and I also question whether an independent preservation agency would be able to attract appropriate public support to maintain sufficient funding, staff, and operational integrity in the future. Nevertheless, if I were to choose between the current situation and an independent agency I would, of course, endorse the NCSHPO position on independent agency.

Senator Fowler and his staff are to be commended for this legislative initiative. I also appreciate the time and attention which the Subcommittee on Public Lands, National Parks, and Forests is giving to this important measure which pertains to the preservation of the nation's heritage.

WRITTEN TESTIMONY

of

William S. Price, Jr.
State Historic Preservation Officer of North Carolina

on the

NATIONAL PRESERVATION POLICY ACT

S. 1579

May 19, 1990

before the
Subcommittee on Public Lands, National Parks, and Forests

I. INTRODUCTION

I am the director of the North Carolina Division of Archives and History which had its beginning in 1903. Our agency administers a broad range of history-related programs for the service of the people of North Carolina. Under state law I am the state historic preservation officer and our Archaeology and Historic Preservation Section serves as the State Historic Preservation Office. In terms of staffing, programs, and funding we maintain one of the largest state historic preservation programs in the nation. North Carolina has benefitted from participation in the federal preservation program under the National Historic Preservation Act and we look forward to participating in it for many years ahead.

The National Conference of State Historic Preservation Officers (NCSHPO), of which I am a member, presented testimony on S.1579 February 26, 1990, before this subcommittee. I believe that the conference testimony was an excellent and eloquent presentation of sound reasons why the August 4, 1989, draft of S.1579 should be supported. I endorse the conference's testimony in its entirety. However, I respectfully suggest a few minor amendments to the bill. My suggestions are as follows:

II. SUGGESTIONS FOR AMENDMENTS TO S.1579.

Section 115, Prohibition of Unauthorized Archaeology and Transactions Involving Archaeological Resources and Penalties for Violation. Pages 42-45. This section incorporates a penalty section which is confined to instances in which archaeological resources are adversely affected. My staff and I find it inconsistent that wilful violations of the law resulting in injury to historic structures are not subject to comparable sanctions. I suggest the creation of a companion penalty section in the National Historic Preservation Act that would, at least, provide for civil penalties against persons acting in an official capacity for flagrant violations of federal agency preservation protection requirements under Section 106 of the National Historic Preservation Act of 1966. Accordingly, violations affecting both buildings and archaeological sites would be discouraged.

We successfully worked for the inclusion of such a penalty clause in the legislative draft completed by NCSHPO in 1987. Our support for such a provision stemmed from the improper release in North Carolina of federal funds by a federal official to a local government in clear violation of the 106 consultation process. In our view this contributed to the destruction of National Register eligible properties.

Section 201, State Historic Preservation Programs. Page 63, lines 19-23. Under this section the Secretary of the Interior is directed to administer a program of matching grants and cooperative agreements for the states to carry out. Subhead (C) categorizes program activities to include "acquisition, preservation, and archaeological treatment of properties listed on the National Register." The word "development" or "construction" should be added after the word "acquisition" in order to make it clear that grants for the restoration or rehabilitation of National Register properties are allowed under the National Historic Preservation Act. I stress this point as a result of a preservation needs assessment study undertaken in North Carolina this year by my staff. Of $33 million of preservation needs identified, the largest portion, $28.8 million, is for construction activity such as repair, rehabilitation, and restoration.

Additionally, we fail to see why treatment of properties listed on the National Register should be limited only to archaeological treatment. The word "archaeological" should be deleted in order that all National Register properties are eligible for any category of treatment that is consistent with the purposes of the National Historic Preservation Act. This would, of course, include archaeological treatment.

Section 401, Revision of Provisions Relating to Local Programs. Subhead (8), page 76, lines 10-12. Subhead (8) states that "the secretary may provide direct assistance to any certified local government preservation program to carry out the provisions of this act." This language should be amended to allow such direct assistance only in the case of coordination and consultation with the state historic preservation officer, or in the case of there being no approved state program. North Carolina and its sister states have expended a great amount of funds, and have developed comprehensive statewide programs and plans in order to participate in the federal preservation program. Direct federal involvement with local governments without the coordination or involvement of state historic preservation officers and their staffs would be disruptive and impair the maintenance and operation of comprehensive state preservation programs.

III. CONCLUSION

If followed, the suggestions I have made would result in minor changes to an otherwise excellent and comprehensive updating of the nation's historic preservation laws. Senator Fowler and his staff are to be commended for their care and attention in soliciting the viewpoints of the states in the development of S.1579. I also appreciate the time and attention which the Subcommittee on Public Lands, National Parks, and Forests is giving to this important bill which pertains to the preservation of the nation's heritage.

TESTIMONY OF

EUGENE P. KOPP, DEPUTY DIRECTOR, U.S. INFORMATION AGENCY

ON

S.1578, HISTORIC PRESERVATION ADMINISTRATION ACT of 1989

AND

S. 1579, NATIONAL HISTORIC PRESERVATION POLICY ACT of 1989

SUBMITTED TO

PUBLIC LANDS, NATIONAL PARKS AND FORESTS SUBCOMMITTEE

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

FOR HEARINGS ON FEBRUARY 22, 1990

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to present the views of the United States Information Agency on Section 9 of S. 1578, the Historic Preservation Administration Act of 1989, which would transfer functions and authorities of the President's Cultural Property Advisory Committee to a new Historic Preservation Agency to be established by S. 1578. The Agency opposes this idea and also has concerns about Sections 117 and 121 of S. 1579.

Essentially, S. 1578 is concerned with the preservation of our domestic cultural heritage, a perfectly laudable goal; however, the responsibilities of the Cultural Property Advisory Committee are international in scope and an important component of USIA's public diplomacy mission. We do not think the two missions could practicably be combined in one entity. As the lead agency for implementation of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the USIA relies heavily on the Committee's recommendations as to whether the U.S. should impose import controls on artifacts essential to the cultural patrimonies of other nations. Concern for the preservation of the heritage of other countries is an integral part of USIA's program as carried out by cultural affairs officers in our embassies throughout the world. We already have the system in place to deal with the concerns of other nations.

The U.S. Information Agency was reorganized in 1978 to consolidate the responsibility for policy guidance for international educational and cultural relations of the U.S. Government in one agency. This, of course, includes our activity with respect to other countries in cooperating internationally in the protection of the world's cultural heritage. We feel it would be inappropriate and very inefficient to fragment this important function by putting it in a domestically focused entity.

We wish to point out that the composition of the Cultural Property Advisory Committee, as established by 19 U.S.C. 2605, consists not only of archaeologists but also requires representation by art dealers, museum representatives and the general public. The Committee is so constituted in order to provide the U.S. Government with the expertise and views of relevant interest groups involved in the international movement of antiquities. The composition of the committee was the subject of much discussion before the Cultural Property Act was enacted by the Congress..

The responsibilities of the USIA Director, as the President's designee under the Cultural Property Act, and those of the Cultural Property Advisory Committee are intertwined. It is the Director of USIA who, on behalf of the President, receives requests under the Act for U.S. import restrictions on the archaeological or ethnological material of other countries. It is the USIA Director who refers matters for review to the Cultural Property Advisory Committee and considers the Committee's findings and recommendations. The USIA Director exercises the President's function of determining whether U.S. import restrictions should be imposed in response to an official request under Article 9 of the Convention. The Director of USIA also has functions and authorities expressly given to him by the cultural property law. To date, the U.S. Government has received, and the Committee reviewed, requests from five countries for import controls on endangered artifacts - Canada, El Salvador, Bolivia, Peru and Guatemala. In this effort the USIA works closely with the U.S. Customs Service and the Department of State.

As the lead agency for establishing policy and carrying out programs that address the sensitive foreign policy issue of international illicit trade in art and artifacts, the USIA has developed international programming in this area, including international exchange and information programs. Through the pivotal role of the Committee, the United States has joined the international community in a global effort to curtail the destructive, senseless looting of the World's heritage.

The U.S. Information Agency also opposes sections 117 and 121 of S. 1579. Section 117 directs the Advisory Council on Historic Preservation, in consultation with the Cultural Property Advisory Committee, to call for and organize U.S. participation in an international conference on the international antiquities trade, with the goal of having in place an effective program for controlling looting and trafficking in stolen artifacts in 1992.

We feel it is unrealistic to hold such a global conference with the expectation that it will yield a program more effective than that established by the Congress in the 1983 Convention on Cultural Property Implementation Act. It has been our experience that the most practicable approach for international cooperation is the 1970 UNESCO Convention which takes into consideration disparate legal systems. It is within this framework that the United States has taken the lead in fostering international cooperation to protect endangered artifacts of other countries. The Cultural Property Act prohibits the entry of articles of stolen property from the 67 state parties to the Convention. Also, it enables the USIA Director, in conjunction with the U.S. Customs Service, to impose import controls on illegally exported archaeological and ethnological materials of other countries.

We believe that the proposal to call an international conference to examine the complex issue of international trade in stolen and looted art is redundant and not warranted in these days of fiscal restraint. During the past two decades numerous conferences have been held by various international bodies in which the United States has actively participated. Conferences devoted to the topic of illicit trade in antiquities are held routinely by organizations such as UNESCO, the International Council of Museums, INTERPOL, the New World Conference on Rescue Archaeology, to name a few. Most recently, in December 1989, the United States sent a delegation of eight experts to a conference on this very subject organized by INTERPOL and UNESCO. Last month, a U.S. delegation participated in a meeting of the International Institute for the Unification of Private Law, UNIDROIT, to discuss a draft convention concerning the rights of innocent purchasers of art, one of the more controversial issues requiring examination. In June of this year, the Paris-based Institute of International Business Law and Practice is holding a symposium in Amsterdam on the Legal Aspects of International Trade in Art. American participants include the general counsels of the Getty Museum and the National Gallery of Art. Representatives of international museum professional organizations and training centers, as well as auction houses, are participating in the symposium.

Each country has the sovereign right to protect and control its national cultural resources and manage them in the way it sees fit. This is a very complex issue involving international law, law enforcement, commercial interests as well as the need to preserve the World's heritage. We believe there are adequate mechanisms in place for the United States to continue to be a leader in the international community on this issue.

Section 121 of S. 1579 calls for the registration of artifacts removed from archaeological sites in the United States and abroad for the purpose of controlling interstate and international traffic in antiquities. It is unclear from the language of the bill how artifacts of other countries should be registered. The establishment of an art and artifacts registry is an idea that has surfaced before only to fall because of the complexities of its administration. The U.S. museum, academic, and art dealer communities should be consulted with regard to this idea, for they will be the most affected. Therefore, USIA urges that a comprehensive study of the rationale, feasibility and practicality for a U.S. Government registry of artifacts be undertaken before enactment of this section.

BN

MAINE HISTORIC PRESERVATION COMMISSION
55 Capitol Street
State House Station 65
Augusta, Maine 04333

Earle G. Shettleworth, Jr.
Director

Telephone:
207-289-2133

February 12, 1990

Senator Dale Bumpers, Chairman
Subcommittee on Public Lands, National Parks, and Forests
308 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Bumpers:

I am writing to express my support for S. 1578, the Historic Preservation Administration Act.

This act would remove the Historic Preservation program from the National Park Service and the Department of the Interior, establishing it as a new, independent Preservation Agency under the umbrella of the existing Advisory Council on Historic Preservation.

Ever since the beginning of Historic Preservation's relationship with the National Park Service in 1966, as one of that agency's "external programs", Historic Preservation has all too often been viewed as a low priority, even irrelevant to the mission of the National Park Service. The consistent zero-budgeting of the program by its parent department through the 1980s is evidence of this fact.

In providing the Historic Preservation Program a new, independent niche, S. 1578 could give it the kind of visibility and support enjoyed by other endowed programs, such as the National Endowments for the Arts and Humanities. This would surely improve the status of one of the Federal Government's smallest, but most effective programs.

Sincerely,

Christopher C. Glass
Chairman

cc: Senator Mitchell
Senator Cohen

SOUTH DAKOTA HISTORICAL SOCIETY
State Historical Preservation Center

1990 FEB 20 PM 1:58

February 13, 1990

Senator Dale Bumpers, Chairman
Subcommittee on Public Lands, National Parks and Forests
308 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Bumpers,

This refers to Senate Bill 1578 which provides for the creation of an independent Historic Preservation Agency and a National Center for Preservation Technology. The bill deserves Congressional support.

Anyone aware of changes in America over the last twenty years realizes our historic preservation program is a miraculous thing. The National Historic Preservation Act gave purpose and direction to the nation's concern for its heritage and, in doing so, profoundly changed our countryside, cities and towns. The Act brought innovation to the fields of architecture, construction, planning and community development. It tapped new sources of community self reliance and community appreciation. In two decades historic preservation revolutionized attitudes toward heritage conservation, converting perceptions of it from the realm of eccentricity to serious business.

Today, poised at the edge of a new century, historic preservation is a major issue and as the century unfolds it will become more significant. Aging historic resources will appreciate in historical value; they will be further developed and their commercial contributions will accelerate. Increasingly, "old town" sections of communities will be broadly utilized for the purposes of tourism, commercial marketing, education and the quality of American living.

3 East Main, P.O. Box 417, Vermillion, SD 57069-0417 (605) 677-5314 Department of Education and Cultural Affairs, Office of History

It is time to acknowledge the nation-wide relevance preservation has assumed. We must also prepare for historic preservation's expanded role in the future of our country. The language of S.1578 does that by setting historic preservation apart from competing interests in the Department of Interior and expanding the program's ability to conduct and distribute the results of technical research.

Preservation's current administrative position is disadvantageous. Too often the initiative to press for investments in the preservation of our country's historic resources takes a place in line behind extraneous concerns. The resulting diminution of effort reveals an organizational system designed to operate the preservation program envisioned almost three decades ago. That system must be brought up to date. From my point of view this legislation is not a reaction to managerial practices within the National Park Service. It is a response to the realities of being at the bottom of an administrative structure. Independence from competing but separate Park Service and Interior agendas is a way to establish balanced priorities for America's historical resources on the merits of national preservation needs.

Another purpose of the bill is to catch up with how preservation is applied today and how it will be practiced tomorrow. As a technology in the broadest sense historical preservation must expand to meet growing demand and must be allowed to anticipate future directions. Conceived as a planning tool for the federal government, the National Register of Historic Places is now at the center of a wide range of complex relationships with units of government, agencies, organizations and individuals. Apart from the protection of historic and prehistoric places through federal mitigation procedures and restoration techniques, preservationists work with community development officials, city planners, individual investors, rural development specialists, educators, recreationists, tourism directors and a host of private and public sector interests. Preservation is still a tool but its application to problems and plans has broadened considerably since the creation of the National Register. The National Center for Preservation Technology created by the Act will provide a means to analyze and distribute advanced preservation information.

The issues raised by S.1578 are serious and require attention. Their resolution will establish a formula for the conduct of heritage protection in our country for many years. If that formula is appropriate the investment we make in America's historic resources will return to us manyfold. But if we fail to take full opportunity to celebrate, educate and profit by using our rich heritage wisely much will be lost. Your support of S.1578 is respectfully requested.

Sincerely,

Paul M. Putz, Director
South Dakota Historical Preservation Center

CC: Senator Pressler
Senator Daschle
Representative Johnson
Dr. Fishburne
Mr. Wyatt
Mr. Hertfelter

NATIONAL COORDINATING COMMITTEE
FOR THE PROMOTION OF HISTORY

Administrative Offices: 400 A STREET SE
WASHINGTON, DC 20003(202) 544-2422

DR. PAGE PUTNAM MILLER
Director

Members

American Historical Association
Organization of American Historians
Society of American Archivists
Western History Association
Phi Alpha Theta
Southern Historical Association
American Association for State and Local History
American Military Institute
American Political Science Association
Society for Historians of American Foreign Relations
Society for History Education
ABC-CLIO
Coordinating Committee on Women in the Historical Profession-Conf. Group on Women's History
History of Science Society
Society for the History of Technology
Berkshire Conf. of Women Historians
Council on Peace Research in History
Immigration History Society
Conference Group for Central European History
Women Historians of the Midwest
Georgia Association of Historians
Polish American Historical Association
Agricultural History Society
American Library Association-Library History Round Table
Federation of State Humanities Councils
Society for History in the Federal Government
National Council on Public History
National Archives Assembly
American Association for the History of Medicine
Association for Documentary Editing
Midwest Archives Conference
National Association of Government Archives and Records Administrators
Federation of Genealogical Societies
Oral History Association
Mid-Atlantic Regional Archives Conference
American Society for Legal History
American Studies Association
Council on America's Military Past
Economic History Association
History Associates, Inc.
Institute for Historical Study (San Francisco)
National Council for the Social Studies
New England Archivists
Nuclear Age History & Humanities Center
Public Works Historical Society
Society of Georgia Archivists
Society for Industrial Archeology
Southern Association for Women Historians

State Coordinating Committees

Alabama
Arizona
Arkansas
California
Connecticut
Georgia
Idaho
Illinois
Indiana
Kansas
Kentucky
Maryland
Michigan
Minnesota
Missouri
Montana
New Hampshire
New Jersey
New Mexico
North Carolina
North Dakota
Ohio
Oklahoma
Pennsylvania
Texas
Utah
Vermont
Wisconsin

February 22, 1990

Senator Dale Bumpers
Chairman
Subcommittee on Public Lands, National
Parks and Forests
Dirksen Senate Office Building - Room 308
Washington, DC 20510

Dear Senator Bumpers,

On behalf of the fifty member organizations of the National Coordinating Committee for the Promotion of History, which is composed of this nation's major professional historical organizations, I am writing to request that the following statement on S. 1578 and S. 1579 be included in the February 22, 1990, hearing record of the Subcommittee on Public Lands, National Parks and Forests.

NCC Statement on S. 1578 and S. 1579

S. 1578 and S. 1579 raise many issues related to the strengthening of this nation's historic preservation policy. While the NCC has great sympathy for the broad goals of these bills, we would prefer an approach that would establish the professional independence of the National Park Service and enhance the cultural resource management component of the National Park Service.

Because the Administration recommended, during most of the 1980s, zero funding for the State Historic Preservation Program and the National Trust for Historic Preservation, there has certainly been reason to explore a new structure for the national historic preservation program. However, there are recent developments that seem to indicate that the National Park Service may be more willing now to fulfill its broader leadership role in historic preservation.

One of the NCC's concerns about the structural changes proposed in S. 1578 and S. 1579 is that the current oversight arm of the historic preservation program, the Advisory Council, would be merged with the operational arm. This framework would deprive the national historic preservation program of important elements of checks and balances. Another reservation with the proposed structural configuration is that the establishment of the Archeology Advisory Board elevates one discipline above the others. Historic preservation is an interdisciplinary endeavor and the advisory board should either be more inclusive or parallel boards should be created for other major disciplines within the historic preservation field.

There are, however, a number of positive measures within S. 1579 that the NCC could support. We are pleased to see provisions that would improve the accountability of our national preservation program. We support the creation of a National Center for Preservation Technology. We were glad to see attention placed on professional standards and training but urge that historians as well as archeologists but included. The attention to the National Historic Landmark program is also commendable; however, we would also propose that a system be established within the National Historic Landmark program for professional peer review by specialists in the given fields of specific theme studies.

Although the NCC does not endorse S. 1578 and S. 1579, we appreciate the work of Senator Fowler in focusing the attention of Congress on these important issues. And we thank Senator Bumpers for holding a hearing to consider the many problems and possible solutions for strengthening this nation's national historic preservation program.

Thank you for giving us this opportunity to add our comments to the hearing record.

Sincerely,

Page Putnam Miller

Page Putnam Miller, PhD
Director

MAR 01 '90 13:51 P.05

PRIDE

P.O. Box 1692
Islamorada, Florida 33036

Preservation of Our Right As Individuals To Discovery And Exploration

February 27, 1990

Beth
FYI

The Honorable Dale Bumpers
United States Senate
SD-229 Dirkson Senate Office Building
Washington, D. C. 20510-3403

Dear Senator Bumpers:

The non-profit organization PRIDE was established by a diverse group of individuals interested in research, historic shipwreck salvage, commercial fishing and other commercial marine industries.

We wish to express our opposition to Senator Fowler's Bill, the National Preservation Act S1579. We are specifically opposed to Section 123 which would extend the Abandoned Shipwreck Act limit to 200 miles offshore.

We have just gone through a horrendous fight with the Federal Government over the Abandoned Shipwreck Act of 1987, which resulted in a violation of our Constitutional Rights. We are a member of the National Shipwreck Alliance which is dedicated to demonstrating the unconstitutionality of the Act in the courts. Therefore, we see S1579 as an additional violation of our rights and freedoms.

With this letter, we formally place ourselves on record as opposed to Bill S1579, and respectfully request that you vote against sending this Bill to the full Senate.

Sincerely,

Duke Long

Duke Long
President - PRIDE

DL/s
cc: Deborah Estes

PRIDE
P.O. Box 1692
Islamorada, Florida 33036
Preservation of Our Right As Individuals To Discovery And Exploration

ADDENDUM - PARTIAL LIST OF COMPANIES OWNED BY PRIDE MEMBERS AFFECTED BY BILL S1579

Duke Long	Treasures From The Sea, Corp.
Sara A. Matthies-Long	Spindrift Creations
Carl Fismer	Spanish Main Treasure Company
Henry Taylor	Neptune Explorations
Jack Haskins	International Research
Barbara LaValle	Treasure Expeditions
Jim King	Oceanic Research and Salvage
Pat Yanaton	Commercial Products Research (NJ)
John Berrier	Jebco Sales
Chuck Mitchell	Sea Search
Don Washington	Out Island Treasure Salvage Mariner III Charters
Mel Fisher	Treasure Salvors Cob Coin Company
Pam Martin	Organized Fishermen of Florida
Bob Weller	Crossed Anchors
Ron Nelson and Floyd Drake	Treasure Adventures
Joe Kimbell	Creative Signs
Earnest Richards	Florida Treasure Brokers
Bud Havens	E Z Slide Products
Les Bowen	Finapac Corporation
Tom Tietje	Toejamb, Inc.
Dwight McNelly	New Way Systems
Al Weinbaum	Sink or Swim
Grady Sullivan and Dr. Henry Feddern	Florida Marine Life
John Reddick	Tavernier Dive Center
Bob Allison	DNA
Ace Ridgley	Untold Treasure
Richard Sosrodjojo	Sosro, Inc.
Charles Highbaugh	C. H. Highbaugh and Assoc.
Bill lIsting	Seascape Resort
Ron George	Emerald Underwater Salvage
Chris Barile	Ravenswood Paint and Body
Chris Dillon	C & C Home Improvements
Hank Garvin	Garloo Enterprises
Karen McKee	McKee Archaeological Research
Mrs. Art McKee	McKee Museum, Inc.
Jack McCutcheon	Ocean Marine Limited
Steve Belinda	Eastern Dive Boat Assn.

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Pat Yanaton	Commercial Products Research (NJ)
John Berrier	Jebco Sales
Chuck Mitchell	Sea Search
Don Washington	Out Island Treasure Salvage Mariner III Charters
Mel Fisher	Treasure Salvors Cob Coin Company
Pam Martin	Organized Fishermen of Florida
Bob Weller	Crossed Anchors
Ron Nelson and Floyd Drake	Treasure Adventures
Joe Kimbell	Creative Signs
Earnest Richards	Florida Treasure Brokers
Bud Havens	E Z Slide Products
Les Bowen	Finapac Corporation
Tom Tietje	Toejamb, Inc.
Dwight McNelly	New Way Systems
Al Weinbaum	Sink or Swim
Grady Sullivan and Dr. Henry Feddern	Florida Marine Life
John Reddick	Tavernier Dive Center
Bob Allison	DHA
Ace Ridgley	Untold Treasure
Richard Sosrodjojo	Sosro, Inc.
Charles Highbaugh	C. H. Highbaugh and Assoc.
Bill lIsting	Seascape Resort
Ron George	Emerald Underwater Salvage
Chris Barile	Ravenswood Paint and Body
Chris Dillon	C & C Home Improvements
Hank Garvin	Garloo Enterprises
Karen McKee	McKee Archaeological Research
Mrs. Art McKee	McKee Museum, Inc.
Jack McCutcheon	Ocean Marine Limited
Steve Belinda	Eastern Dive Boat Assn.

TESTIMONY BY ANNE GIESECKE

BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS, AND FORESTS

FEBRUARY 22,1990, ON S. 1579

A BILL APPLYING TO ABANDONED AND HISTORIC SHIPWRECKS

In 1982 I drafted the Abandoned Shipwreck Act of 1987. That bill has barely been implemented and efforts are being made to deal with shipwrecks in the area beyond the three-mile limit.

If we can not wait to evaluate our current efforts, I have two suggested alternatives to the language in S. 1579. My first suggestion is that Congress seriously look at the possibility of state jurisdiction to 12 miles. The Presidential Proclamation on the territorial sea has raised some serious questions for legislative implementation. Shipwrecks should be managed in the context of other offshore resources, not singled out in this arbitrary manner. Legislation for state jurisdiction over all resources to 12 miles, possibly as an amendment to the Submerged Lands Act, should be developed.

My second suggestion is that, given the failure of Congress to implement Exclusive Economic Zone legislation, the NOAA Marine Sanctuary program should be reviewed. OTA or the Library of Congress or some other unit of government should review and report on the alternatives to the current cumbersome and extremely conservative approach to the designation and management of sanctuaries. A more creative and flexible program might be better equipped to handle the isolated historic shipwreck beyond the 12 mile limit.

I will gladly work with members of Congress and their staffs to develop a system to protect historic shipwrecks beyond three miles.

TESTIMONY BY ANNE GIESECKE,

SECRETARY OF THE ADVISORY COUNCIL ON UNDERWATER ARCHAEOLOGY

BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS, AND FORESTS

FEBRUARY 22,1990, ON S. 1579

A BILL APPLYING TO ABANDONED AND HISTORIC SHIPWRECKS

I am testifying on behalf of the Advisory Council on Underwater Archaeology. The Council is made up of professional archaeologists, and is a part of the Society of Historical Archaeology.

We oppose the amendment of the Abandoned Shipwreck Act of 1987 as described in the Amendments to the National Historic Preservation Act, the Historic Sites Act, the Archaeological Resources Protection Act, and the Abandoned Shipwreck Act, S. 1579. We note that Congressman Bennett declined to amend the Abandoned Shipwreck Act when he introduced H.R. 3412.

Amendment at this time is premature. The Act has not yet been fully implemented and tested at the state level.

Expansion of title to abandoned shipwrecks beyond three miles raises serious questions of state versus federal jurisdiction that will need review in the context of fishing, mineral, and oil and gas rights. State jurisdiction out to 12 miles needs to be considered.

The bill does not address the necessary coordination of federal regulation and the roles of the Department of Commerce, the U.S. Coast Guard, the Corps of Engineers, and the federal admiralty court. The Secretary of the Interior must consult with but not necessarily follow the advice of the Advisory Board or the Secretary of State. The potential biological or recreational value of the resources is not considered.

The bill expands the Abandoned Shipwreck Act to shipwrecks "lying on the seabed," drops the quality of abandonment, and raises serious ownership and liability questions.

The bill proposes to expand the already costly federal bureaucracy over a resource which is not clearly defined in an area of jurisdiction where U.S. rights are not clearly defined.

We support the protection of our nation's cultural heritage, and we are anxious to work with Congress and other interested groups toward that goal. We worked hard to pass the Abandoned Shipwreck Act. Please feel free to contact us at anytime.

Underwater Society of America
P.O. Box 628
Daly City, CA 94107
415/583-8492

TESTIMONY BY GEORGE ROSE,

PRESIDENT OF THE UNDERWATER SOCIETY OF AMERICA,

BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS, AND FORESTS

FEBRUARY 22,1990, ON S. 1579

A BILL APPLYING TO ABANDONED AND HISTORIC SHIPWRECKS

The Underwater Society of America is the largest volunteer sport diving organization in the United States. Established in 1959, the Society now has over 8,000 members. Since its incorporation, the Society has promoted the enjoyment of diving and acted as spokesman and protector of the sport.

In 1983 we made a commitment to represent the interests of the sport diving community; almost 3 million people, which, previously, had no effective voice in the discussion of shipwreck bills. The Diving Equipment Manufacturers Association along with other sport diving organizations, joined our efforts in 1984.

We worked hard to pass the compromise Abandoned Shipwreck Act of 1987. We are here today to testify in opposition to any amendment to the Abandoned Shipwreck Act of 1987, at this time.

The Act has not been fully implemented by the States. We need time to implement and evaluate our current efforts. Serious questions about state and federal jurisdiction within and beyond the three miles need to be considered. Oil and gas leasing, artificial reef programs and many other state and federal initiatives need to be coordinated. The proposed amendment fails to address these concerns. The definition of which shipwrecks are to be covered is a serious one; we have reservations about the proposed definition, that it is too broad and that it is different from the Abandoned Shipwreck Act.

We support the protection of historic shipwrecks and advocate the recreational appreciation of these resources. We look forward to working with Congress to address the issue of protecting historic shipwrecks beyond the three-mile limit.

Member of:

THE
GEORGE
WASHINGTON
UNIVERSITY
Graduate Program in Historic Preservation / Washington, D.C. 20052

Department of Urban and
Regional Planning
Department of History
American Studies Program
(202) 676-6098
(202) 676-7475

MAR -2 [illegible]

1 March 1990

Hon. Dale Bumpers
Subcommittee on Public Lands,
National Parks, and Forests
308 Dirksen Senate Office Building
Washington, D.C. 20510-6518

Dear Senator Bumpers,

I am writing as a private citizen to lend my support to two bills pending before the U.S. Senate, S. 1578 and S. 1579, concerning the federal role in historic preservation. While the views I am expressing and strictly my own and do not necessarily reflect those of either my employer or of the organizations with which I am involved, these views are based upon some twenty years of experience in the field of historic preservation -- in large cities and small towns, on both coasts and in the heartland, in the public and private sectors, and at the national, state, and local levels.

My support for these bills is based first and foremost on what I consider to be a serious leadership vacuum in preservation at the national level. Locally and in many states, preservation has never enjoyed greater grass-roots support or government participation. The reduction of possibilities for investment tax credits has taken its toll -- a long-term toll, I fear, for the health and well-being of American communities -- yet the preservation movement as a whole has, as always, proven amazingly resilient.

At the same time, national leadership has not moved substantially forward for about a decade. To a certain degree the situation has been due to the herculean effort needed to maintain the status quo in the face of repeated proposals for zero funding from the previous administration. But I do not believe that those circumstances are the sole or veen the root cause.

The tremendous growth of preservation over the past twenty years calls for, indeed demands, a new leadership structure one that is adequately funded and properly staffed to meet the ever widening spectrum of challenges facing the movement today. This need for change should not reflect badly upon the Park Service, of which I have been a staunch supporter. The Park Service has accomplished much in the field; its staff has been of invaluable service in ways to numerous to enumerate. However, the Park Service's own diverse mandates coupled with the rise of substantial preservation activities in numerous other branches of the federal government alone auger for an agency whose sole and explicit charge is to address those needs.

Such a change would also, I believe, reinvigorate the private sector, just as the 1966 act did. Most of the essential work done in preservation will still be conducted at the local and state levels. Yet if my experience has taught me one thing it is that, whether one is in the largest of cities or the smallest of towns, in places where preservation has been practiced for generations or places where it is still new, the national preservation program lends a vital underpinning to those efforts. The strength and energy of federal policies and practices very much affect what citizens can accomplish at home. We need to bring new life to the partnership.

Sincerely,

Richard Longstreth, Director

SCUBA

P.O. Box 34599
Bethesda, Maryland 20817
(301) 897-3191

UNITED STATES SENATE

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

STATEMENT FOR THE RECORD ON S.1579 (Section 123)

by the International Scuba Association

February 22, 1990

As an association composed entirely of sport scuba divers, the International Scuba Association is in the unique position of commenting on S.1579 (Section 123) absent any commercial interests. Our concern centers on the additional control that state and federal governments seek to force upon divers and their chosen sport.

Less than three years ago divers were caught in the grip of another controversial piece of legislation: The Abandoned Shipwreck Act of 1987. That bill, which ultimately became P.L. 100-298 was passed off as an historical imperative. The rationale for this legislation went as follows: that salvors and sport divers were plundering the nation's historical shipwrecks and therefore needed to be discouraged...bluntly and decisively.

After asserting ownership to all abandoned wrecks within three miles of shore, the federal government then passed title to the various states. The states were then asked to manage their newly confiscated resources.

Thusfar, the Abandoned Shipwreck Act has had the following results:

1. Very few states have allocated the dollars necessary to adequately manage their submerged resources. Some coastal states are now proud owners of thousands of shipwrecks. They cannot even locate all of their holdings, let alone manage them.

2. Confusion has permeated the state historical and natural resource agencies. No one seems to know who has jurisdiction over what. Bureaucrats are confounding themselves trying to figure out whether or not they are responsible for certain wrecks, what this responsibility entails and who is to blame if something goes awry.

3. Sport diving permits are rapidly becoming de rigueur for state governments. It is difficult to trace the money collected from these permits, but it can be safely assumed that most goes toward building and maintaining a buracracy rather that actually managing submerged resources. Despite government rhetoric to the contrary, most divers see permits for what they really are: just another unwanted tax.

4. Sport divers or salvors with an interest in in-shore wrecks have become more secretive about their operations. By recovering artifacts and other objects within three miles of shore, divers run the risk of possibly breaking the law. Since shipreck laws are practically unenforceable (and virtually no one understands the laws anyway), it has become far easier to simply "do your own thing" while keeping a low profile.

5. Objects that are recovered stand little or no chance of being displayed in public or donated to museums. They might have been removed from a controlled wreck and therefore could be considered state property...the owner being suceptible to fines or worse. The public, of course, has suffered.

6. A general distrust has developed between sport divers and their governments. During the events preceding the enactment of P.L. 100-298, sport divers were alternately ignored, berated, divided and misrepresented. This helped destroy any hope of large-scale cooperation between the parties.

Now we are witnessing the latest chapter in the sad story "shipwreck conservation": a blatant effort to extend government control over all submerged resources lying within the 200 mile economic zone of the United States...control that the government neither needs, deserves or should be granted.

By claiming ownership of all resources within the economic zone, the federal government would effectively make all but a few wreck divers criminals whenever they remove a man-made object from the sea. Section 123 of S.1579 would profoundly alter the way wreck divers and dive charter boats would be forced to operate. The proposed law holds open the possibility of much more regulation and restriction, greater expense and, most unfortunate, a drastic reduction in personal freedom.

Meanwhile, any benefits to the land-bound public, would be extremely difficult to identify. No longer would artifacts be displayed (exept by the very foolhardy or audacious). Truly valuable items would "disappear", their owners undoubtedly preferring the free markets of Europe to the fines and imprisonment of this country. Books, films and videos based upon the activities of individual explorers and collectors would cease to be produced. And finally, the discovery of new wrecks and historical sites would grind to a screeching halt as individual divers would hardly be encouraged to turn their new-found discoveries over to the government.

The 1987 confiscation of shipwrecks within three miles of shore was a bad precedent and will likely be contected on Constitutional grounds by the American Sport Divers Association. The addition of 197 new miles of territory to this cache would be unprecedented. As an organization of sport divers, ISA fervently asks that the members of this Subcommittee consider what, if any, benefits will accrue from such action. Once this determination is made, compare the results with the cost to all Americans in terms of their personal freedom. For although certain parties may classify this issue as a debate between archeologists and salvors, the real victims will always be regular Americans like you and me.

With that in mind, the members of ISA urge the Subcommittee to strike Section 123 from S.1579. Do it for three million sport divers...and for every other American who values freedom and resents unecessary government intrusion into their daily lives.

The International Scuba Association (ISA) represents sport divers around the U.S. The Association is a member of the National Shipwreck Alliance.

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THE NAVAJO NATION

Leonard Haskie
Interim Chairman
Navajo Tribal Council

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Interim Vice Chairman
Navajo Tribal Council

Statement of the

NAVAJO NATION

on the

HISTORIC PRESERVATION ADMINISTRATION ACT

S.1578

before the

Senate Energy and Natural Resources Committee,
Subcommittee on Public Lands, National Parks and Forests

Introduction

The Navajo Nation is pleased to offer testimony on the Historic Preservation Administration Act, S. 1578. The Navajo Nation is the largest Indian tribe in the United States and the Navajo Reservation is the largest reservation in the lower 48 states. Like all Indian tribes, the Navajo Nation is deeply concerned with the protection and preservation of its cultural, historic and archaeological resources. This concern extends beyond those heritage resources directly antecedent to modern Navajo culture to all of the significant reminders of the American heritage located on the Navajo Reservation, regardless of the cultural group responsible for creating them. As a measure of the Navajo Nation's commitment, the Navajo Nation Historic Preservation Department was established four years ago. The Navajo Tribal Council established this agency even though, unlike the states, the Navajo Nation had no real opportunity to obtain federal funding to help underwrite the operation of its program. Only this year have any funds been made available by Congress to support tribal preservation programs and the amount of money appropriated for FY 90 is so small that there is no assurance that the Navajo Nation will receive any of it.

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THE NAVAJO NATION ENDORSES THE CONCEPT OF S.1578

The Navajo Nation endorses the concept of an independent historic preservation agency, with responsibility to promote and administer the national preservation program. This endorsement is not intended as a criticism of the National Park Service. Given the numerous competing interests within the National Park Service and within the Department of the Interior, it is remarkable that the preservation program has fared as well as it has. Furthermore, the Navajo Nation would like to note for the record that the National Park Service, both in the Southwest Regional Office and in the Washington Office has been most supportive and fully cooperative with the Navajo Nation's efforts to establish its preservation program. While the National Park Service has done a commendable job in difficult circumstances, the eight year effort by the Reagan Administration to eliminate funding for the Historic Preservation Fund is instructive. It indicates to the Navajo Nation the political vulnerability of historic preservation in a large multi-function (and one where some of the important functions conflict dramatically with preservation) agency such as the Department of the Interior.

Accordingly, the argument that a single agency focused on historic preservation will do a better job than a multi-mission agency can do seems quite compelling. An independent agency would not have to balance internally a plethora of competing priorities, nor would it be compelled to appear responsive to a wide variety of external constituencies. It seems apparent to the Navajo Nation that as long as the preservation program must compete for funding and other priorities as one small part of the National Park Service program within the Department of the Interior it will be unlikely that the preservation program will receive the support and commitment necessary to achieve the goals set for it by Congress and the American people. The Navajo Nation stresses that this is not an indictment of National Park Service, rather it is a recognition of the nearly impossible conditions the preservation program is faced with within existing organizational constraints.

ALTERNATIVE ORGANIZATIONAL SCHEMES SHOULD BE CONSIDERED

While the Navajo Nation endorses the concept of an independent preservation agency, the Navajo Nation believes that some alternative organizational structures should be considered before Congress acts. The Navajo Nation suggests that at least the following two options deserve particular attention.

The first organizational option that needs to be considered is a preservation agency within Interior. Such an agency would be a collateral agency to the National Park Service and the other bureaus. The Navajo Nation suggests that at the same time as the preservation agency is created a new position of Assistant

Secretary for Parks and Preservation should be created. This position would increase the preservation program's status and ability to compete within the Interior Department. It would not require the creation of a new administrative support apparatus and would retain the preservation expertise within Interior, which is needed to meet many of its mandated land and resource stewardship functions.

The second option that needs to be considered is an independent preservation "commission." The commission would have a professional staff, with an appointed, paid, full time commission directing its activities. The model for such an organization would be provided by any number of independent federal commissions. The advantage of the commission, in addition to its independence, is that the professional expertise to the commissioners would be continuously available to guide agency operations. It eliminates or reduces the need for advisory panels and eliminates any problems that might result from vesting administrative functions in advisory boards. Furthermore, a commission of 3 to 5 members, appointed with staggered terms would ensure that executive direction of the agency would have continuity.

The Navajo Nation commends Senator Fowler for introducing this legislation which addresses an important and controversial issue of critical importance to the effective preservation of our Nation's patrimony. The Navajo Nation thanks the Subcommittee for the opportunity to comment on this bill and welcomes this bill and the review of the administration of the national preservation program that its consideration will entail. The Navajo Nation is willing to meet with the Subcommittee staff to discuss specific issues in an effort to improve the bill. If the Navajo Nation can provide you with additional information or if you wish to discuss these comments further, please contact Dr. Alan Downer, Navajo Nation Historic Preservation Officer, (602) 871-6437 or 6438, P.O. Box 2898, Window Rock, AZ 86515.

TN 9/22

The Society for History in the Federal Government
Box 14139, Benjamin Franklin Station Washington, D.C. 20044

March 13, 1990

The Honorable Dale Bumpers
Subcommittee on Public Lands, National Parks
and Forests
308 Senate Dirksen Office Building
Constitution Avenue and First Street N.E.
Washington D.C. 20510

Dear Senator Bumpers:

On behalf of the Society for History in the Federal Government, a professional organization composed of historians and archivists who work in federal agencies, I wish to present the Society's views on S. 1579, legislation seeking to amend the National Historic Preservation Act and other related acts concerned with the preservation of our historic heritage.

While there are several worthy provisions in this bill, the Society is concerned with sections which seem to place greater emphasis on archeology over other pertinent disciplines. For example, Section 118 (page 49-50) establishes "Archeologists Professional Standards" but there is no similar provision embodied in the legislation establishing professional standards for historians, landscape architects or curators who are engaged in cultural resource activities.

Another example is Section 103 (pp. 11-13) which includes a detailed description of how the the needs of an endangered archeological property would be addressed, but there is no similar guideline outlined for endangered historic properties. While there is certainly much that can and should be proscribed in law to protect our nation's cultural heritage, in general it appears to us that many sections outlined in this proposed legislation should more appropriately be addressed through regulation rather than cast in legislative language.

Mr. Chairman, we are pleased to see Title V, "Education and Training" included in this legislation. While we note that the "Society for American Archeology" is specified in the bill (see page 77) as an organization that should be consulted, we believe other professional disciplines and organizations such as the Society for History in the Federal Government, the Organization of American Historians, the American Historical Association and the National Council on Public History, and other organizations representing the other disciplines (i.e. the American Association of Museums, the Association for Preservation Technology to name but two), are not similarly specified. We believe all the pertinent disciplines should be reflected in any legislation seeking to preserve of our nation's heritage.

Finally, although we have not subjected this proposal to detailed economic or increased work load analysis in terms of the costs and responsibilities placed on the Advisory Council and the Secretary of the Interior and in turn the federal historical community, there is little doubt that this legislation would seriously impact the federal historians ability to carry out each agency's respected primary mission.

Thank you for allowing us to share our thoughts with you.

Sincerely,

William S. Dudley

William S. Dudley
President

A Tale of Two Villages: The Case for a National Policy of Landmark Protection

Communist plot or maturing capitalism?

© Ronald Lee Fleming

There are some places that are so special that they set the imprimatur of value on our sense of the American landscape. Their aesthetic qualities and historical associations come together powerfully for us even if we have only experienced them two dimensionally while unfurling the pages of the National Geographic Magazine. However, when these special places are threatened, we are all diminished, even if our memory is only imprinted from a magazine.

Such a place is the village of old Deerfield, Massachusetts, where the colonial past is still palpably present in a mile long corridor of clapboard houses that salute the street with their pedimented doorways. One hundred and fifty years ago, on a gentle mound rising above rich farmland, this street was viewed as handsome when John Quincy Adams, well traveled in his day, could exclaim, "it is not excelled by anything I have seen, not excepting the Bay of Naples."(c. 1830, found in History of Deerfield Vol. 1 page 29, 1895)

Only a few years ago, standing in the shade of the bower of giant elms that arched over this street, one could glimpse the horse and shay of Deerfield Academy's patriarchal headmaster, Frank Boyden, who watched his school grow around it for fifty years. Even without most of its elms and the Boyden buckboard, the street preserves much of its magic because, at least until now, it has retained its setting. It is a setting for all seasons that filters time through the stillness of eventide. The views between the houses look out to the hills where school boys might still imagine that Indians are lurking, waiting to swoop down, and kidnap the inhabitants, as they did once in 1704 during the French and Indian War, taking fifty hostages to Canada. Today, the lurking danger is that this setting and others like it across America may be taken hostage by private developers making a killing on the sale of house lots, exploiting the values of such a special setting.

But for now, the fields remain close to the old Deerfield street. Intensely green in the summer light, the corn appears like waves, lapping up to the long peninsula of the street, reminding the viewer that it was rich agriculture that produced the prosperous material culture of these proud houses. From the road, one can still look out across meadows and tilled fields to the river, a view that has largely remained the same since the eighteenth century.

But beyond that view, there is another, a vista of newly rising condominiums that despoils the memory we have just stored and robs us of some of its meaning because it intrudes upon the fragile poignancy of this special setting. Just a little more than a mile south of the main street, these condominiums are rising in thuggish rows, shouldering their way along the scenic river road toward Deerfield.

How could this happen in a nation that has had a national preservation act on the books since 1966? The Village has long been recognized as a National Historic Landmark, the highest category on the National Register of Historic Places defined by that act in 1966. Deerfield is significant in our history because it was once a frontier outpost, then the site of a brutal massacre during the French and Indian war, and later the most affluent and elegant of the eighteenth century Massachusetts towns in the Connecticut River Valley. It is just the sort of place that people assume is forever protected.

But, the fact is that listing on the National Register only requires that there be an environmental impact assessment for certain federal actions affecting such property. It doesn't require that local land use laws be compatible with the national recognition of Deerfield's historic character. Indeed, there is probably less than a fifty percent correlation between local land use protection through historic districts and the 362 districts with National Historic Landmark status. Even when the two do overlap, in most cases, the historic districts are drawn so narrowly that they don't protect the environmental context. Arguably, Deerfield has the most important single street in New England, with the possible exception of Salem's Chestnut Street with its upright federal mansions, or of Boston's Mount Vernon Street, which Henry James once declared had the longest view in America.

But, Deerfield still has no local historic district. Four attempts at formation have failed. Historic designation is repeatedly beaten down by those who fear that such designation will dictate the color residents must paint their houses (a local option under Massachusetts law). Most of the houses on Deerfield's street, by the way, are the muted eighteenth century colors or dark wood, not the late 19th century white that now blankets classic New England villages like Litchfield or Craftsbury Common.

So here we have a phenomenon, an extraordinary historical site within a larger township - population 1,000 - that is generally indifferent to its value. The buildings along the historic corridor are mainly owned by Deerfield Academy, two other private schools, and Historic Deerfield, Inc., which Mr. and Mrs. Henry Flynt founded in 1952. The Flynts became interested in Deerfield when their son was a student at the academy in the 1930s and began acquiring the old houses. Great collections of American antiques now shimmer, beautifully preserved in twelve of the restored houses. But, the fields that so handsomely define the mound of the main street are, for the most part, owned by four farming families and remain loosely zoned as residential/agricultural at two acres per residence with their low lying meadow land not clearly demarked as "wetlands" (subject to more scrutiny for building permits).

Even though the Flynts and their allies went all the way to the White House in the early 1960s to stop I-91 from dumping its access roundabouts in the north meadow, the rude arrival of the condos and the subsequent acquisition by developers of a 106 acre parcel of largely wetland just south of the condos demonstrates how haphazard and provisional are local planning capabilities. As one member of the zoning board of appeals put it recently, "The obvious is never obvious in a place like this." Deerfield's state of vulnerability would appear bizarre to policy makers from European countries that utilize broader conservation zones to protect the integrity of special areas- including the width of roads, the vegetation, and the farms' outbuilding areas. Tiny Holland has 140 such zones.

Thus, the threatened condition of this very special place raises a general question about our capacity to protect ourselves in a market oriented society. Does the free enterprise system or the constitution give us the unfettered right to foul our nest? Professor John Humbach, a professor at Pace University and an authority on the "takings" issue of the 5th amendment, says claims to the affirmative would be extravagant. "No such private sovereignty in the use of land was ever premised in law, certainly not in the common law....The claims are, moreover, inconsistent with the social obligation of property that is inherent in the structure of American law.(1)" Recent Supreme Court takings decisions put the onus on the property owner

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1. Law and a New Land Ethic by John A. Humbach

to show that regulation has left "no possibility of economically viable use" (Humbach) -- which is not the same thing as the highest price on the speculative market. According to Professor Humbach and other authorities, the stream of U.S. Supreme Court case law on this is quite clear.

Still, in America, local land use protection has lagged significantly behind other kinds of environmental regulation such as air and water pollution controls. Many see local zoning as an empowerment tool that defines how you can develop rather than as a conservation strategy to preserve a certain balance of resources in every area. The troubling case of Deerfield raises a serious question about the effectiveness of local zoning as a national preservation policy tool. Is nothing precious enough to be passed on to our descendants unless it is owned lock, stock, and barrel by some foundation or government body?

Gordon Abbott, former Director of the Trustees of Reservations, the oldest land trust in the world and headquartered in Massachusetts, responds with Yankee astringency, "Thats crazy. We shouldn't have to buy the landscape in order to protect it." Our zoning should protect agricultural land and the settings of historic villages and towns that are signficant economic resources. After all, 100,000 people visit historic Deerfield every year. The soils are among the richest in Massachusetts, and the land is listed in the scenic inventory that the state made in 1982 as "notable" within a broader sweep of countryside moving east to Sunderland and Sugar Loaf Mountain, which is among the most memorable in the state and a major tourist destination in the fall color season.

So what is to be done? Despite the acquisition of some open space easements by Historic Deerfield, a plethora of consultants including state agricultural extension agents, the American Farmland Trust, Trustees of Reservations, the executive office of Communities and Development, and the Center for Rural Massachusetts, the consciousness raising of land use conferences, and an emerging land trust movement, this very special place is being ruined bit by incremental bit before our eyes.

Perhaps part of the answer lies in recognizing that the very nature of the small communities that possess these extraordinary scenic assets usually prevents them from establishing effective zoning, or establishing it in a timely fashion, which means the same thing. This is the situation in Deerfield where a part-time administrative assistant in charge of responding to planning changes (now resigned) was one of only a handful of paid professional employees in a township which relies heavily on overworked volunteer boards. Of course, there are some able people on these boards, but they operate like boards in most small towns - on a reactive basis with rivalries between villages and the inhibition between neighbors about stepping on the toes of anyone who wants to make money out of land.

The town open space plan has not yet been completed even though the area has been on a state inventory of significant visual resources since the early 1970s. Until the plan is completed, the Town can not obtain federal or state funds for acquisition of open space; state funds are now on hold anyway-due to Massachusetts's fiscal crisis.

When this writer spoke to the Historic Deerfield trustees about the land crisis at their annual meeting last October, he discovered that the principal property owners, the various academies and schools, had yet to share information about their plans; they have yet to develop a joint land trust though their holdings comprise several of old Deerfield's principal viewsheds, including much of the ridgeline just east of the village.

A mile and a half south of the street stand the new condominiums fitted out in the standard pseudo-colonial ranchette amalgm, flaunting their ungainly shapes against the carefully furrowed fields. A local landowner erected eleven in the first phalanx two years ago after giving local farmers only two weeks to come up with cash to buy the land. As no land trust was in place to make a bridging loan, and as the zoning was loose, the local developer was allowed to proceed with his plans. Now, four of the condos are offered for resale. Perhaps the owners, isolated in the countryside, are getting cold feet as their wet basements reduce marketability. Yet no one - not the planning commission, not the schools, nor Historic Deerfield - enjoined the board of health from issuing a permit or requested for the appropriate state agency, the Department of Environmental Protection, to enjoin the action!

There is the small town fear of getting involved in what is perceived as 'other people's business'. This is a principal reason why local land use controls in many heritage areas are such a failure. This past year the landowner built four more condos a half a mile closer to the village with another three half finished, standing naked in their cheap particle board construction overlooking the gently rolling fields with a view southeast to Sugarloaf, the lookout point that affords that classic vista of the Connecticut River Valley- long narrow tobacco barns, expansive fields, and meandering river. Take a good look now (more than 80,000 people did in 1989); it's not a preserved view except, of course, if you keep those old calendars of classic New England scenery.

These condos are hunching just beyond "The Bars," the elegiac Mill Village road that follows the river south of Old Deerfield Village. This road wends it way past tree-lined banks with glimpses of the green river below and through an eighteenth century hamlet flanked with old sugar maples where large wooden houses sit back primly from the street. Then it climbs a slight grade through a wood and runs into open fields where one now witnesses a spectacular planting of those condos. There is talk of designating what remains of this now ravished byway as a "scenic road". The Massachusetts enabling legislation for scenic roads makes this a local option. It can be pursued or not; there is no requirement that what is handsome be protected.

With more condos in the making for Deerfield, the urgency of the situation finally manifested itself last spring. Historic Deerfield organized a very local and (intentionally) non-threatening land use conference only for local property owners that was conducted by the well-respected Conway School of Landscape Design. Located nearby, the school has been deploying its students to prepare some open space guidelines for the village. This conference may, in fact, lead to a compact between some of the landowners, though the largest farmer, with holdings in the north meadows, did not express any interest. Historic Deerfield, Inc. now has enjoined the developer with the large acreage south of the condos to meet the requirement of filing an environmental impact statement; and findings are bearing out the contention that most of this acreage is wetlands.

But meanwhile back on the north meadows, one of the state's richest archeological desposits, a transcontinental natural gas company is seeking to run not one, but two major natural gas pipelines; the farmers are resisting it, not because it would disturb the archeological site, but because it would dig up their fields. And to the west, across the Deerfield River in a little valley owned by two ninety-year-old Yankee farmers who control what has been described as an "1850s vista", a major local developer wants to align some fifty condos on one of the townships last dirt roads. Despite the shock of the new proposals, some decision makers may still believe that this is the developer's right -- that someone's short-term gain should have more sanction than a community vision.

Obviously, the assault on Deerfield is not unique, development pressure is a news item almost every day in cities and towns across the country, and in the absence of any comprehensive system of planning the poorer, more rural communities are at a distinct disadvantage. But the most compelling news is that even these special places, which have non-profit foundations to encourage their preservation and constituencies who have cared about them for decades, find it a full time chore to remain vigilant. In this regard, historic Waterford, Virginia, appears to offer the closest comparison to Deerfield.

Nestled in a bowl of soft hills in western Loudoun County, aapproximately an hour's drive from Washington, it has a street of brick and wood houses that reflect 250 years of continuity. Settled by Quakers, Waterford is also a National Historic Landmark District with handsome viewsheds and it, too, has its own protective foundation, older than Deerfield's, which has sought to acquire easements on buildings and land since 1944.

But the land values here in this rapidly suburbanizing county are rising steadily each year. Loudoun County has yet to align the local zoning with the preservation plan that the County drew up, but which was privately funded by the Waterford Foundation. The Foundation hired a land use consultant who created a limited development plan for each of the farms that would preserve some of the open space. Meanwhile, four of the five farms that form the viewshed around the town are either under contract agreement or for sale.

In September of 1988 the National Trust for Historic Preservation put Waterford on its list of the eleven most endangered landmarks, along with Old Deerfield, because of the sale of the eighty-five acre Huntley farm to a developer who planned fifty-four houses on the pastureland at the south end of the village. After long negotiations and national publicity, a compromise was reached in October 1988. The developer agreed to reduce the number of units to fifteen in two clusters to be nestled in woodland and to preserve 55 acres in open viewshed. The Foundation, in exchange, paid the developers $200,000 for the scenic easements; half the money was from the state.

At the opening meeting of the 1988 annual conference of the National Trust in Cincinnati, the president of the Trust, who has a weekend retreat there, claimed that Waterford had been saved. "Not so," declares Catherine Ladd, the executive director of the Waterford Foundation,

> "As the zoning stands today, 235 new structures could be built within the landmark's 1,420 acres. This would more than double the current structures, thereby obliterating the character and integrity of the landmark and causing instant dedesignation. We can either fight in court or purchase to own. The county won't downzone as the Waterford Area Management Plan recommends or extend the local historic district beyond the village to encompass the viewsheds

> within the National Historic Landmark district because they simply don't have the staff, tools, and resources to do it.

Last June Mrs. Ladd estimated that it would cost approximately twelve million dollars to buy up the developable land of the remaining four farms, whose owners have expressed some interest in selling (only one farm owner is pledging to protect his land with restrictive easements). But now it appears that one of the farms, with several hundred acres in the landmark district might be up for sale. Area prices range from $10,000 - $13,000 an acre elevating the figure the foundation would have to raise to seventeen million dollars.

The Foundation's urgent inquiries to the American Farmland Trust went unfulfilled, except for the possibility of a bridge loan at the prime lending rate, because the the land was priced too high for them; the Trust for Public Land said it might be willing to make a bridging loan if permanent financing would be arranged by some other body. But, the purchase figure is staggering to the Waterford Foundation, strapped as it is by having to buy one large in-town property already and by its struggle to reduce the proposed lots on the Huntley farm. Waterford continues to look desperately for money sources and creative financing options; so far with no success. The prospects look dim, though the Foundation plugs on. Perhaps the ultimate assault on the notion of acquiring development rights is the action of a consortium of 132 Japanese investors. In October, 1989 they acquired the 2800 acre Firestone Farm which is just outside the landmark district, but a major piece of the viewshed, for twenty-six million dollars! This speculative escalation forces the question.

Isn't it about time that the federal government acknowledge minimum standards for protection of areas that are designated "national landmarks?" Indeed, what is the sense of making such a designation if the context of such sites can be converted to uses that change their character and appearance? American zoning case law provides many precedents for the right of government to reduce the speculative value of property through regulatory action without paying compensation, as long as the landowner retains some use and therefore some value for the land. After all, the value of land is the result of many kinds of public decisions and investments - in Deerfield the cornfields are valuable for condo sites because of access to an interstate highway allowing isolated condo owners to commute an hour to jobs as far away as Hartford.

In Waterford, part of the value in buying a manorette in the pasture would be the exquisite pleasure of looking at historic Waterford's hard-fought-for investment in a handsomely preserved town. Market demand for such pristine settings need not shift all of the value as a windfall to the large property owner who is in proximity to such a community investment. Just as we can limit the fish taken from a land owner's river, we can zone to limit the appreciation of private land value, thus respecting the rights and values of the entire community. However, it takes a certain courage to downzone -- to risk the displeasure of neighbors, or perhaps to deprive a brother-in-law of a job as a contractor; it is questionable whether the town meeting in Deerfield or the County Supervisers in Loudoun County will find that courage or that sustaining wisdom in a majority who makes these decisions (this being a democracy with a small "d"), no matter how many public interest consultants come to town to talk about the common good. That is, in fact, why these issues have to be addressed by other levels of government where a broader view of what constitutes the public interest prevails.

Finding Broader Review Authority

Once these special resources are gone, they are gone for all of us. We need to give these places some immediate protection as "areas of critical environmental concern" where permits for changes in use, density, and design can be reviewed. In the case of Deerfield, Massachusetts, this would mean review by the state Department of Environmental Management, or, as an enlarged conservation district, overseen by the Massachusetts Historical Commission. Let's allow the broader public interest to prevail where there are values that are identified as of state or national importance, rather than allowing selfishness or short sightedness to reign.

Is this regulatory review happening in Massachusetts? There is some awareness of the need. A high ranking state planning officer in the Department of Environmental Management said recently, "we can't go on tolerating the feckless frittering away of the qualities that make Massachusetts a nice place to live. The towns aren't doing the job, the only answer is stronger state legislation."

Unlike Virginia, Massachusetts already has statuatory authority to create critical environmental areas, but only three have been designated back from the coastline in the fifteen years since the authority was promulgated. Coastal Zone Management, the lead agency for the shore line, has designated some eleven areas where this technique has more effect because of stricter standards for wetlands permitting. There is also a strong environmental bill of rights dating from 1972 that states that people shall have a right "to the natural scenic, historic and aesthetic qualities of this environment". As Chris Greene, Director of preservation planning for the Department of Environmental Management puts it, "It would be controversial to assert state authority to protect the five percent of the state that is listed in the visual inventory, but not so controversial that it couldn't be done. At some point you have to take a stand." But the fact remains that Massachusetts is broke right now after allocating more money for open space than any other state. Virginia, where Waterford continues to be under spectacular seige, doesn't even have state authority to put a moratorium on new construction while new zoning regulations are being prepared!

Creating Incentives for Preservation Action

Designated areas of critical environmental concern should receive a priority for enhancement monies. The availability of grants for these larger conservation areas would serve as the carrot to go with the stick of state enforcement imposed on local governments that did not adopt similar minimal standards consistant with the character of the historic and scenic resources which they possess. Deerfield has already put its telephone wires underground with private monies, but other nationally recognized historic areas like Edgartown and Nantucket are still cluttered with telephone poles and other intrusions upon their historic context. Waterford has been struggling for seven years to get the state to underground their wires, but the state department of transportation, which requires the undergrounding of wires for new subdivisions, states categorically that there would be an insurance liability issue if the roads in this, the only landmarked village in Virginia were not brought up to state standards at the same time which, of course, would destroy the very nature of the place -- another preservation "Catch 22."

Certainly, having some funds for interpretation of sites, something that Waterford does now in the old one room school house used in the 1880s for the village's black children, is essential for major landmark districts if we are to build a future constituency. Just as a percentage of governmental funds is allocated for public art at federal, state and local levels, so it can be argued that there be a percentage of funds earmarked for the interpretation of national historic landmark districts or other critically important sites. As a nation we are simply not getting the message across about the importance of these resources.

Making the sites physically accessible also strengthens and builds that constituency. The Waterford plan talks about an easements program for trails along the creek so that people can walk though the district. Similar ideas have been proposed for Deerfield. The trail systems that criss cross and connect nationally classified sites in Switzerland and Great Britian should be our model.

Most preservationists don't understand this point about enhancement, about maximizing the pleasure, the accessibility, the information, and the attractivenss of historic sites that can reach a far greater constituency who may not have a single reason for visiting historic sites. State Historical Commissions, preoccupied with the tedium of putting properties on the National

Register and running (usually) single building grant-in-aid programs, often suffer from the same single purpose fixation as the highway engineers or insurance lawyers.

In contrast, the British planning act of 1971 uses the words, "conservation" and "enhancement" together, and a recenttest in conservation districts there found a judge interpreting the word, "enhancement" to evaluate whether a change in density enhances the character of a district, so that the issue about development doesn't merely refer to the attractiveness of new development, but about whether a change in use or density will damage the very character of the place, an unappealing condition which the designation of a conservation district should restrict(2). This can mean absolutely limiting the number of houses in an historic village, rather than merely trying to hide them cleverly in the trees (as a recent award winning book by the Center for Rural Massachusetts suggests) (3), must be the solution in some areas where the survival of certain rural values are at stake.

Looking for National Solutions

Reacting to a local planning system that is designed to fail as Deerfield and Waterford poignantly illustrate, and finding

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2. Denzil Millichen, "Steinberg and the Importance of Enhancement," (Heritage Outlook, Vol. 9: No. 2, 1989).

3. Prof. R. D. Yaro, R. G. Arendt, H.L. Dodson, E.A. Brabec, Dealing with Change in the Connecticut River Valley: A Manual for Conservation and Development, (Mass Dept. of Econ. Mgmt. & Center for Rural Massachusetts, Jan. 1988

states as yet unprepared to meet the problem, preservationists are increasingly looking for some national solutions. It took what is now known as "The Third Battle of Manassas", (the struggle to save a quadrant of the Civil War Battlefield) "to prod" the national preservationists into action, as Congressman Mrazek, one of the two leaders of the fight in the Congress, put it recently. In this case, there was a grass roots coalition led by Annie Synder in the countryside combined with the powerful efforts of Olgivy and Mathers' Washington Director, Jody Powell, who brought the issue before the Congress and stopped Virginia's most powerful developer from building the second largest shopping center on Stuart's Hill where Stonewall Jackson massed his troops. The site is significant, as historian James McPherson testified before Congress; the confederate victory in the second battle almost caused the European powers to give diplomatic recognition to the South.

Yet, the developer continued to bulldoze the site to increase his market value until the day the Congress voted to appropriate funds for the taking! Meanwhile, a local county board of supervisors, anxious to secure the tax dollars, served as the developer's accomplice with the county chairman actually telling the National Park Service to mind its own business within the park.

Unlike Manassas and other battlefields, Deerfield and other National Landmark districts, or those eligible for such status, are not soaked with American blood. They probably don't have the same pull on the heartstrings, but taken together, a high visibility campaign can be made for them as national treasures. It is as important to save such villages as it is to save the Shepherdstown Road leading out of Sharpsburg on the edge of Antietam Battlefield Park, the most unspoiled battleground in the East. It certainly is in the national interest for Antietam not to be Gettysburgered with a detritus of commercial strip edging up to the gates of the park!

To address these assaults on national treasures, preservationists are drafting a National Heritage Conservation Act to protect the context of National Historic Landmarks as well as areas around national parks, monuments, and battlefields. This is a good idea- and long overdue. It can represent a needed land use alliance between preservationists and national environment advocates. As currently drafted, it would, among other things, provide for better planning and protection for units of the National Park System, including adjacent lands. It would require the review of existing National Historic Landmarks so that some, which do not meet the new definition for national significance, could be delisted. The proposed bill would identify other nationally significant properties (new NHLS that could be placed on a list of endangered properties) by petition as well as authorize the Secretary of the Interior to attempt to enter into binding agreements with owners of endangered properties for long term protection and provide grants for this purpose. It also would strengthen some of the protective language against actions by other federal agenices.

So far, only a small National Coordinating Council is reviewing this bill. Preservationists have expended much time and energy on concerns about what constitutes a National Landmark, but a critical weakness remains in the bill: It seeks to exercise federal authority to negotiate only when there is "owner consent".

If the situation in Deerfield, and its sister village Waterford, have any meaning, it is that we cannot expect private property owners in any considerable numbers to voluntarily preserve and enhance the character of an area. Nor can we rely upon the government to have the enormous quantities of money that these owners claim their property rights are now worth.

We must rein in our commercial instincts and curb capitalistic excess. If we are, as a culture, to mature in this area of land use regulation, we can't expect this speculative pressure to be resisted at the grass roots level where it is the greatest, even for the wealthy, who want to maximize profit or as Professor Humbach puts it, "cash in their lottery tickets". He says,

> "The takings clause...does not prevent the government from enacting new restrictions that apply to land which a developer has already bought. Even though such after-the-purchase restrictions may be onerous on the buyer whose intended use is foreclosed, the government's power to

> regulate cannot be cut down by purely private transactions. If it were otherwise, then zoning codes could never have been constitutionally imposed in the first place, [and] current zoning could never be tightened....Speculative transactions bidding up land prices do not ratchet up the constitutionally guaranteed uses which are immune from governmental land-use regulation. (4)

As Catherine Ladd, fighting to save the space around Waterford reminds us, "The power to make effective land use laws preserving these places has to start with the federal government. The states are too weakkneed to do it, and the greed is too great at all levels."

Many of the special places that truly distinguish our heritage, like Deerfield and Waterford, will be gone in three years at the current rate of development. We must, for a limited and discrete number of listed sites, require that local zoning be compatible with the character of the site and that local actions preserve and enhance that character. A more comprehensive accounting of land costs should also calculate the diminishing of public values if many of these precious lands are developed and their special qualities sacrificed for private gain.

Preserving the integrity of this heritage gives meaning to our espoused love of country. It gives us the substance that can inform our patriotism and is thus more compelling than waving the

4. Humbach, pp.16-19

flag or trying to pass constitutional amendments to stop its defilement. Saving the character of the country that gives that flag its symbolic value is a larger issue.

We must do more than draft legislation. We must build the awareness that will demand stronger protective legislation. Let's face it squarely - the time is late. We desperately need national land use protection around special sites. The challenge for national preservation organizations like the National Trust and Preservation Action and equivalents at the state level is to creatively orchestrate the forces to build public and governmental awareness.

The way to temper the resistance is to show the owners what is happening and how this rhetoric about property rights is being misused. Conservatives should want to conserve the values of this country as they are inculcated in the landscape and townscape just as much as liberals should.

We need to orchestrate the creative labors of writers and artists to evoke the values of these places as Tom Wicker and Russell Baker have done on their own recognizance, and as Oliver Wendell Holmes did so effectively with his poem about "Old Iron Sides" 150 years ago. This requires conviction, dramatic flair, a precise passion, and a comparative command of the facts - knowing what other countries are doing with land use planning in order to give our own Congress a sense of urgency and perspective. We need traveling exhibitions that show the Congress and the state legislatures the visual impacts of defilement and the spiritual desolation that accompanies it. This means that the National Trust, the largest preservation organization, will have to take a more assertive role as a national preservation advocate thus, going far beyond setting up a National Heritage Education Center in an old school in Waterford, VA.

If we are to deflate all the flummery about the sanctity of private property rights that mask so much raw greed and stupidity, we need to know about the specialness of the Deerfields, which so palpably evoke the unique contributions, the substantial achievements - even the aesthetic power of our culture. We do not want that special experience - that power of place - to be filtered through tract housing or the detritus of the commercial strip. The time for action is now.

It's time to go beyond drafting drafts and updating lists of threatened sites, it's time to dramatically present our story to the nation. The Deerfields and Waterfords of America cannot wait.

Ronald Lee Fleming, a native son of the West, was a preservationist before he knew it. He experienced his first preservation inspiration as a young boy building a "ghost town" on land adjacent to his family house in Los Angeles County. He suffered his first preservation loss when the bulldozers removed the ghostown while preparing the site for his grandmother's new house. The feeling of poignancy about the fragility of the past was anchored by his experience as a Historic Deerfield Fellow during a beautiful summer twenty-five years ago.

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